

a fund earmarked for non-issuer official elections might “free up” other money to support the candidacy of specific issuer officials.

The need for dealers to adopt adequate written supervisory procedures to prevent indirect violations via “housekeeping”, “conference” or “overhead” type political party accounts is especially important in light of media and other reports that issuer agents have informed dealers and MFPs that, if they are prohibited from contributing directly to an issuer official’s campaign, they should contribute to an affiliated party’s “housekeeping” account. In addition, NASD staff has informed the MSRB that some firms make contributions to “housekeeping” accounts or PAC’s with explicit instructions accompanying the payment that the specific payment is not to be used for the benefit of one or a limited number of issuer officials. The MSRB does not consider such “preemptive” disclosures or instructions sufficient to meet the dealer’s obligation to perform due diligence to reasonably ensure that the payment to the political party or PAC is not being made to circumvent the requirements of Rule G-37.

(September 22, 2005)

IV. Definitions (Rule G-37(g))

Contribution

IV.1

Q: How is the term “contribution” defined in Rule G-37?

A: The term “contribution” is defined in Rule G-37(g)(i) to mean any gift, subscription, loan, advance, or deposit of money or anything of value made: (i) for the purpose of influencing any election for federal, state or local office; (ii) for payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office.

(May 24, 1994)

IV.2

Q: Is Rule G-37 applicable to contributions given to officials of issuers who are seeking election to federal office, such as the House of Representatives, the Senate or the Presidency?

A: Yes. Rule G-37(g)(i) defines “contribution” as, among other things, any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for federal, state or local office.

(June 15, 1995)

IV.3

Q: Does Rule G-37 encompass all contributions to candidates for federal office?

A: No. Rule G-37 encompasses, for federal offices, only those contributions to an official of an issuer who is seeking election to a federal office.

(May 24, 1994)

IV.4

Q: Are contributions to bond ballot campaigns subject to the requirements of Rule G-37?

A: Such political contributions are subject to the disclosure requirements of Rule G-37(e) (other than contributions made by a municipal finance professional or a non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed \$250 per ballot initiative). Although such contributions will not result in a ban on municipal securities business under Rule G-37(b), as with all MSRB rules, failure to comply with requirements of the rule (*i.e.*, by failing to disclose such contributions) may subject dealers to fines and other disciplinary actions by the Securities and Exchange Commission, Financial Industry Regulatory Authority, or other appropriate regulatory agencies.

(May 24, 1994, revised February 25, 2010)

Charitable Donations

IV.5

Q: Would a charitable donation to an organization made by a dealer at the request of an issuer official meet the definition of “contribution” in Rule G-37?

A: No. Charitable donations are not considered political contributions for purposes of Rule G-37 and therefore are not covered by the rule.

(May 24, 1994)

Municipal Finance Professional

IV.6

Q: Who is considered a municipal finance professional?

A: To determine if a particular person is a municipal finance professional, first determine whether the person is an “associated person” of a dealer (other than a bank dealer) under Section 3(a)(18) of the Securities Exchange Act of 1934 (Act), or an associated person of a bank dealer under Section 3(a)(32) of the Act. Then determine whether the associated person fits within one of the four categories listed in the definition of municipal finance professional under Rule G-37.

Under Section 3(a)(18) of the Act, “associated person of a broker or dealer” is defined as:

- Any partner, officer, director, or branch manager (or any person occupying a similar status or performing similar functions);
- Any person directly or indirectly controlling, controlled by, or under common control with the dealer;
- Or any employee of such broker or dealer, except those whose functions are solely clerical or ministerial.

Under Section 3(a)(32) of the Act, “person associated with a municipal securities dealer” when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means:

- Any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer’s activities with respect to municipal securities; and
- Any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

Under Rule G-37(g)(iv), a municipal finance professional is defined as:

1. Any associated person primarily engaged in municipal representative activities pursuant to Rule G-3(a)(i) (such activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of Rule G-37(g)(iv);
2. Any associated person who solicits “municipal securities business” as defined in Rule G-37 (which includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services);
3. Any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in paragraphs 1 or 2 above;
4. Any associated person who is a supervisor of the associated persons described in paragraph 3 above, up through and including: (i) for dealers that are not bank dealers, the CEO or similarly situated official; and (ii) for bank dealers, the officer or officers designated by the bank’s board of directors as responsible for the day-to-day conduct of the bank’s dealer activities.
5. For dealers other than bank dealers: any associated person who is a member of the executive or management committee, or similarly situated officials, if any. For bank dealers: any member of the executive or management committee of the separately identifiable department or division of the bank, as defined in Rule G-1, if any. However, if the only associated persons meeting the definition of municipal finance professional are those described in this paragraph 5, the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person listed by the dealer as a municipal finance professional is deemed to be such for purposes of Rule G-37.

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

IV.7

Q: Does the definition of municipal finance professional include all registered representatives?

A: No. The definition of municipal finance professional includes, among others, any associated person primarily engaged in municipal representative activities pursuant to Rule G-3(a)(i), but excludes sales activities with natural persons.

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

IV.8

Q: Does the definition of municipal finance professional include any associated person who solicits municipal securities business, even if this solicitation activity is a very small portion of the associated person’s work?

A: Yes. Even if an associated person is not “primarily engaged in municipal representative activities,” that associated person can be considered a municipal finance professional if he or she solicits municipal securities business, as defined in Rule G-37 (such business includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services).

(May 24, 1994)

IV.9

Q: Does the definition of municipal finance professional include anyone other than an associated person of the dealer, for example, consultants, lawyers or spouses of municipal finance professionals?

A: No. Municipal finance professionals must be associated persons of the dealer. Of course, if a dealer or a municipal finance professional seeks indirectly to make contributions to issuer officials through consultants, lawyers or spouses, such contributions would result in the dealer being prohibited from engaging in municipal securities business with the issuer for two years from the date of such contributions.

(May 24, 1994)

Finder’s Fee

IV.10 & IV.11 Deleted

IV.12

Q: Is a “finder’s fee” solely cash compensation?

A: No. Such compensation, for example, may take the form of: (i) an unusually large allocation of bonds to a particular sales person; (ii) sales credits; or (iii) any other kind of remuneration.

(December 7, 1994)

IV.13 Deleted

Supervisors

IV.14

Q: A sales representative at a branch office solicits municipal securities business for the dealer. Such activity results in that person becoming a “municipal finance professional” under Rule G-37(g)(iv)(B). Would that person’s branch manager also be considered a municipal finance professional?

A: Yes. Rule G-37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (*i.e.*, the branch manager) also is included within the definition of municipal finance professional. Branch managers are included within the definition of municipal finance professional in the circumstances described above.

(March 22, 1995, revised October 30, 2003)

Designation Period for Municipal Finance Professionals

IV.15

Q: Rule G-37(g)(iv) states that each person designated a municipal finance professional shall retain this designation for one year after the last activity or position which gave rise to the designation. If a dealer terminates a municipal finance professional’s employment, and that person is no longer associated in any way with the dealer (including any affiliated entities of the dealer), must the dealer continue to designate that person a “municipal finance professional” for recordkeeping and reporting purposes under Rules G-37(g)(iv) and G-8(a)(xvi)?

A: No. If a municipal finance professional is no longer employed by the dealer, and is not an “associated person” of the dealer, then the dealer is not required to designate that person a municipal finance professional and the dealer may cease its recordkeeping and reporting obligations with respect to that person.

(August 6, 1996, revised October 30, 2003)

IV.16

Q: If a municipal finance professional is transferred from a firm’s dealer department to another non-municipal department, such as the corporate department, must the dealer continue to designate this person a municipal finance professional for recordkeeping and reporting purposes?

A: If a municipal finance professional is transferred to another department within the same firm (such as corporate, equities, etc.) and remains an “associated person” of the dealer, the dealer must continue to designate this person a municipal finance professional for one year from the date of the last activity or position which gave rise to this designation and must continue its recordkeeping and reporting obligations under

Rules G-37 and G-8. It is incumbent upon each dealer to determine whether the person is an associated person pursuant to Section 3(a)(18) of the Securities Exchange Act of 1934. If so, then in addition to recordkeeping and reporting obligations, dealers should be mindful that any contributions made by this associated person during the one-year designation period (other than contributions that qualify for the rule’s \$250 *de minimis* exception) will subject the dealer to the rule’s ban on municipal securities business for two years from the date of such contribution. Of course, the ban can only be triggered if the person previously was a municipal finance professional.

(August 6, 1996, revised October 30, 2003)

IV.17

Q: A municipal finance professional resigns from a dealer, but still remains an associated person of the dealer (*e.g.*, by retaining a position in the dealer’s holding company). May the dealer cease designating this person a municipal finance professional for purposes of the recordkeeping and reporting requirements under Rules G-37 and G-8? In addition, may this person make contributions to issuer officials without causing the dealer to be banned from municipal securities business with such issuers?

A: If a person is no longer a municipal finance professional because he or she has left the dealer’s employ, but nevertheless remains an associated person of the dealer, then the dealer must continue to designate this person a municipal finance professional for one year from the last activity or position which gave rise to such designation. Moreover, any contributions by this associated person (other than those that qualify for the *de minimis* exception under Rule G-37(b)) will subject the dealer to the rule’s ban on municipal securities business for two years from the date of the contribution.

(August 6, 1996, revised October 30, 2003)

IV.18

Q: In making the determination of which associated persons of a dealer meet the definitions of municipal finance professional and non-MFP executive officer, is it correct to designate all the executives of the dealer (*e.g.*, President, Executive Vice Presidents) under the category of non-MFP executive officers?

A: No. In making the determination of whether someone is a municipal finance professional or non-MFP executive officer, one must review the activities of the individual and not his or her title. Rule G-37(g)(iv) defines the term “municipal finance professional” as:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

- (B) any associated person who solicits municipal securities business, as defined in paragraph (vii);
- (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);
- (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities 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 pursuant to Rule G-1(a); or
- (E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Rule G-37(g)(v) defines the term "non-MFP executive officer" as:

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 broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1), **but does not include any municipal finance professional**, as defined in paragraph (iv) of this section (g); provided, however, that, if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers. [emphasis added]

Dealers should first review the activities of their associated persons to determine whether they are municipal finance professionals, and then, once that list of individuals has been established, conduct a review of the remaining associated persons to determine whether they are non-MFP executive officers. Dealers should pay close attention to those associated persons who are soliciting municipal securities business and, thus, will be considered municipal finance professionals.

(September 9, 1997, revised October 30, 2003 and June 8, 2006)

Non-MFP Executive Officer

IV.19

Q: Who is a non-MFP "executive officer?"

A: Pursuant to Rule G-37(g)(v), a non-MFP executive officer is defined as any 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), but does not include any municipal finance professional.

(May 24, 1994)

IV.20

Q: In a bank with a separately identifiable dealer department, who would be considered a non-MFP executive officer?

A: For most bank dealer departments which deal only in municipal securities, there are no individuals who meet the definition of non-MFP executive officer within Rule G-37.

(August 18, 1994)

Official of an Issuer

IV.21

Q: How is the term "official of an issuer" defined in Rule G-37?

A: Rule G-37(g)(vi) defines the term "official of an issuer" to mean "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 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. Thus, contributions to certain state-wide executive or legislative officials would be included within the prohibition on engaging in municipal securities business.

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

IV.22

Q: How can a dealer determine whether an incumbent or candidate for a particular elective office will be able to award or influence the awarding of municipal securities business? For example, in many states, such influence is found in executive branch elected officials, not legislative branch officials.

A: The dealer must review the scope of authority of the particular **office** at issue, whether executive or legislative branch, not the individual, to determine whether influence over the awarding of municipal securities business is present.

(May 24, 1994)

IV.23

Q: An incumbent was seeking re-election as an issuer official but she lost the election. She is now soliciting money to pay for the debt incurred in connection with this election. Would there be a prohibition on engaging in municipal securities business with the issuer if a dealer or a municipal finance professional provides money for the payment of this debt?

A: No, under certain conditions. If the incumbent is out of office at the time she is soliciting money to pay for the election debt, then she is no longer considered to be within the definition of “official of an issuer” and any monies given for the payment of debt incurred in connection with the election in this instance is not subject to Rule G-37. If the incumbent still holds her issuer official position at the time she is soliciting money to pay for the election debt, then, if a municipal finance professional contributed \$250 to her during the general election, the municipal finance professional would **not** be able to make any contributions for the payment of debt without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to the incumbent prior to the election, then the municipal finance professional **may**, if entitled to vote for the candidate, contribute up to \$250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may **not** contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

(September 9, 1997)

Dealer-Controlled PAC

IV.24

Q: What is a “dealer-controlled” PAC?

A: Each dealer must determine whether a PAC is dealer controlled. For dealers, other than bank dealers, one may assume that any PAC of the dealer would be considered a dealer-controlled PAC for purposes of Rule G-37. For bank dealers, it will depend upon whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.

(May 24, 1994)

V. Scope of Waiver Provision in Rule G-37(i)

V.1

Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to Rule G-37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a Rule G-37 violation?

A: Rule G-37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board’s view that such an exemption is only effective as of the date of the exemption. Rule G-37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate Rule G-37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.

(March 1, 2000)

VI. Recordkeeping and Reporting (Rules G-37(e), G-8 and G-9)

VI.1

Q: If a dealer has instituted an internal voluntary ban on political contributions, is the dealer still subject to the recordkeeping requirements?

A: Yes. The Board amended Rule G-8 and G-9, on recordkeeping and record retention, respectively, to require each dealer to maintain records of certain information. This recordkeeping is designed to assist dealers in determining whether or not they may engage in business with a particular issuer, as well as to facilitate compliance with, and enforcement of, Rule G-37.

(May 24, 1994)

VI.2

Q: Rule G-8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term “issuer” includes the issuer of a separate security as defined in SEC Rule 3b-5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of a separate security is a private corporation, not a government entity. Must we record these “issuers”?

A: No. Such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. Of course, dealers are required to record the governmental issuer in these situations, for both taxable and tax-exempt municipal securities.

(December 7, 1994)

VI.3

Q: What are the reporting requirements under rule G-37?

A: Dealers are required to submit Form G-37/G-38 to the MSRB by the last day of the month following the end of each calendar quarter. These submission dates correspond to January 31, April 30, July 31 and October 31 of each year. There is no fixed time frame for submission of Form G-37x. However, if a dealer wishes to rely on the Form G-37x exemption from the Form G-37/G-38 submission requirement for a particular calendar quarter, Form G-37x must be submitted by no later than the submission deadline for such quarter.

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

VI.4

Q: Under what circumstances must Form G-37/G-38 be filed with the Board?

A: Form G-37/G-38 must be submitted to the Board for a calendar quarter if ANY one of the following occurred: (i) reportable political contributions or payments to political parties were made during the reporting period, unless the dealer has previously submitted Form G-37x and the submission remains effective; (ii) the dealer engaged in municipal securities business during the reporting period; or (iii) the dealer used consultants during the reporting period (*i.e.*, new or continuing relationship with consultants).

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

VI.5

Q: Does a dealer have to complete the section of Form G-37/G-38 concerning issuers with whom the dealer has engaged in municipal securities business if the only municipal securities related business engaged in during the reporting period was as a selling group member?

A: No. Rule G-37 does not define “municipal securities business” to include selling group member activities.

(May 24, 1994)

VI.6

Q: Which contributions must be disclosed to the Board on Form G-37/G-38?

A: Those contributions which are required to be recorded pursuant to rule G-8(a)(xvi). These include (i) the contributions, direct or indirect, to officials of an issuer and to political parties of states and political subdivisions made by the dealer and each PAC controlled by the dealer (or controlled by any municipal finance professional of such dealer); (ii) the contributions, direct or indirect, to officials of an issuer made by each municipal finance professional and non-MFP executive officer, however, such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of an issuer for whom such person is entitled to vote if the contributions by each such person, in total, are not in excess of \$250 to any official of an issuer, per election; and (iii) the contributions, direct or indirect, to political parties of states and political subdivisions made by

all municipal finance professionals and non-MFP executive officers, however, such records need not reflect those contributions made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the contributions by each such person, in total, are not in excess of \$250 per political party, per year; (iv) the contributions, direct or indirect, to bond ballot campaigns made by the dealer and each PAC controlled by the dealer (or controlled by any municipal finance professional of such dealer); and (v) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional and non-MFP executive officer, however, such records need not reflect any contributions made by a municipal finance professional or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions by such person, in total, are not in excess of \$250 to any bond ballot campaign, per ballot initiative.

(May 24, 1994, revised February 25, 2010)

VI.7

Q: May non-dealers (*e.g.*, attorneys, independent financial advisors) voluntarily submit information on political contributions and other activities to the Board?

A: Yes, as long as the filing procedures are followed.

(May 24, 1994)

VI.8

Q: Will the Forms G-37 submitted to the Board be available for public review?

A: Yes. The Forms G-37/G-38 and Forms G-37x submitted to the Board are posted on the Board’s website for viewing (www.msrb.org).

(May 24, 1994, revised June 14, 2010)

VI.9

Q: May a holding company submit to the Board one Form G-37/G-38 reflecting information for various dealers within the control of the holding company?

A: No. A separate Form G-37/G-38 must be submitted for each dealer.

(February 16, 1996)

VI.10

Q: Rule G-37(e) requires, among other things, that dealers submit information to the Board on Form G-37/G-38 about the municipal securities business in which they engaged. Is information about the municipal securities business engaged in required to be submitted by all syndicate and selling group members, or is it only the responsibility of the manager(s) to submit such information on behalf of the syndicate?

A: All manager(s) and syndicate members (excluding selling group members) must separately report the municipal securities business in which they engaged.

(September 9, 1997)

VI.11

Q: Are dealers required to identify the type of contributor (i.e. dealer, dealer controlled PAC, MFP, MFP controlled PAC, or non-MFP executive officer) when completing Form G-37/G-38?

A: Yes. Rule G-37(e)(i)(2) requires dealers to report to the Board on its Form G-37/G-38 the contribution or payment amount made **and** the contributor category of each of the following persons and entities making such contributions or payments during each calendar quarter: the broker, dealer or municipal securities dealer; each municipal finance professional; each non-MFP executive officer; and each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional. It is not sufficient to list contributors as “employee” or “registered representative.” For each contribution listed on the Form G-37/G-38, one of the specified contributor categories must be identified.

(February 25, 2004)

VI.12

Q: How should contributions to officials of issuers who are seeking federal office be reported on Form G-37/G-38?

A: Under Rule G-37, contributions given to officials of issuers who are seeking election to federal office, such as the U.S. House of Representatives, Senate or the Presidency, must be reported on the dealer’s quarterly Form G-37/G-38 unless they meet the *de minimis* exception. When reporting these contributions, dealers must report information identifying the issuer official. Firms may additionally report information identifying the federal office sought. For example, if a sitting Governor of a state were running for a seat in the U.S. House of Representatives, and the Governor is an “official of an issuer,” the form must list the state where the official is serving as Governor, and the Governor’s complete name and title. Dealers may also report the federal office sought by the issuer official.

(February 25, 2004)

Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G-37

February 21, 1997

Recently, dealers have raised questions regarding how the prohibition on municipal securities business in rule G-37, on political contributions and prohibitions on municipal securities business, applies to certain situations. Rule G-37 prohibits any 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 municipi-

pal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional.¹ If a municipal finance professional makes a political contribution to an issuer official for whom he is not entitled to vote, the dealer is prohibited from engaging in municipal securities business with that issuer for two years. The Board has been asked whether the prohibition on municipal securities business extends to certain services provided under contractual agreements with an issuer that pre-date the contribution. The Board is issuing the following interpretation of the prohibition on municipal securities business pursuant to rule G-37.

“New” Municipal Securities Business

A dealer subject to a prohibition on municipal securities business with an issuer may not enter into any new contractual obligations with that issuer for municipal securities business.² The Board adopted rule G-37 in an effort to sever any connection between the making of political contributions and the awarding of municipal securities business. The Board believes that the problems associated with political contributions — including the practice known as “pay-to-play” — undermine investor confidence in the municipal securities market, which confidence is crucial to the long-term health of the market, both in terms of liquidity and capital-raising ability.

Pre-Existing Issue-Specific Contractual Undertakings

The Board believes that it is consistent with the intent of rule G-37 that a dealer subject to a prohibition on municipal securities business with an issuer be allowed to continue to execute certain issue-specific contractual obligations in effect prior to the date of the contribution that caused the prohibition. For example, if a bond purchase agreement was signed prior to the date of the contribution, a dealer may continue to perform its services as an underwriter on the issue. Also, if an issue-specific agreement for financial advisory services was in effect prior to the date of the contribution, the dealer may continue in its role as financial advisor for that issue. In the same manner, a dealer may act as remarketing agent or placement agent for an issue and also may continue to underwrite a commercial paper program as long as the contract to perform these services was in effect prior to the date of the contribution. Subject to the limitations noted below, these activities are not considered new municipal securities business and thus can be performed by dealers under a prohibition on municipal securities business with the issuer.

Dealers also have asked questions regarding certain terms in contracts to provide on-going municipal securities business that allow for additional services or compensation. For example, a dealer may have an agreement to provide remarketing services for a municipal securities issue, the terms of which allow the issuer to change the “mode” of the outstanding bonds from variable to a fixed rate of interest or from Rule 2a-7 eligible to non-Rule 2a-7 eligible.³ Generally, the per bond fee increases if the dealer sells fixed rate municipal securities or non-money market fund securities. Also, an agreement to

underwrite a commercial paper program may include terms for increasing the size of the program. While the per bond fee probably does not increase if more commercial paper is underwritten, the amount of money paid to the dealer does increase. The Board views the provisions in existing contracts that allow for changes in the services provided by the dealer or compensation paid by the issuer as new municipal securities business and, therefore, rule G-37 precludes a dealer subject to a prohibition on municipal securities business from performing such additional functions or receiving additional compensation.

Non-Issue Specific Contractual Undertakings

Dealers also at times enter into long-term contracts with issuers for municipal securities business, e.g., a five-year financial advisory agreement. If a contribution is given after such a non-issue-specific contract is entered into that results in a prohibition on municipal securities business, the Board believes the dealer should not be allowed to continue with the municipal securities business, subject to an orderly transition to another entity to perform such business. This transition should be as short a period of time as possible and is intended to give the issuer the opportunity to receive the benefit of the work already provided by the dealer and to find a replacement to complete the work, as needed.

* * *

The Board recognizes that there is a great variety in the terms of agreements regarding municipal securities business and that the interpretation noted above may not adequately deal with all such agreements. Thus, the Board is seeking comment on how a prohibition on municipal securities business pursuant to rule G-37 affects contracts for municipal securities business entered into with issuers prior to the date of the contribution triggering the prohibition on business. In particular, the Board is seeking comment on other examples whereby a dealer may be contractually obligated to perform certain activities after the date of the triggering contribution. If other examples are provided, the Board would like comments on how these situations should be addressed pursuant to rule G-37.

Based upon the comments received on this notice, the Board may issue additional interpretations or amend the language of rule G-37.

¹ The only exception to rule G-37's absolute prohibition on municipal securities business is for certain contributions made to issuer officials by municipal finance professionals. Contributions by such persons to officials of issuers do not invoke application of the prohibition on business if (i) the municipal finance professional is entitled to vote for such official and (ii) contributions by such municipal finance professional do not exceed, in total, \$250 to each official, per election.

² The term "municipal securities business" is defined in the rule to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors, placement agents and negotiated remarketing agents. The rule does not prohibit dealers from engaging in business awarded on a competitive bid basis.

³ SEC Rule 2a-7 under the Investment Company Act of 1940 defines eligible securities for inclusion in money market funds.

Application of Rule G-37 to Presidential Campaigns of Issuer Officials

March 23, 1999

In response to numerous calls on this subject, the Board wishes to reiterate its position on the application of rule G-37, on political contributions and prohibitions on municipal securities business, to Presidential campaigns of issuer officials. The Board directs persons interested in contributing to an issuer official's Presidential campaign to the *MSRB Interpretation of May 31, 1995* (the "1995 Interpretive Letter").¹

Rule G-37, among other things, prohibits a broker, dealer or municipal securities dealer ("dealer") from engaging in municipal securities business with an issuer within two years after any contribution to an official of an issuer made by the dealer; any municipal finance professional associated with the dealer; or any political action committee controlled by the dealer or any municipal finance professional. In the 1995 Interpretive Letter, the Board noted that rule G-37 is applicable to contributions given to officials of issuers who seek election to federal office, such as the Presidency. The Board also explained that the only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals.² Specifically, contributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, \$250 to each official, per election. In the example of an issuer official running for President, any municipal finance professional in the country can contribute the *de minimis* amount to the official's Presidential campaign without causing a ban on municipal securities business with that issuer.

The Board previously has stated that, if an issuer official is involved in a primary election prior to the general election, a municipal finance professional who is entitled to vote for such official may contribute up to \$250 for the primary election and \$250 for the general election to each such official.³ In the context of a Presidential campaign, the Board notes that the \$250 *de minimis* amount applies to the entire primary process, up through and including the national party convention. While rule G-37 allows a municipal finance professional to then contribute another \$250 to the party candidate's general election campaign fund, the Board understands that a Presidential candidate who has accepted public funding for the general election is prohibited under federal law from accepting any contributions to further his or her general election campaign.

Finally, the Board also notes that rule G-37(c) provides that no dealer or municipal finance professional shall solicit any person or political action committee to make any contribu-

tions, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business.

¹ The 1995 Interpretive Letter is reprinted in *MSRB Rule Book* (January 1, 1999) at 201-203. It also is available from the *MSRB Rules/Interpretive Letters* section of the Board's Web site at www.msrb.org.

² The term "municipal finance professional" is a defined term in rule G-37(g)(iv). The Board wishes to remind dealers that the term is broader than persons directly involved in municipal securities activities and may include certain supervisors, including in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer, 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. It also may include members of the dealer's executive or management committee or similarly situated officials. See Question and Answer number 2 dated May 24, 1994, reprinted in *MSRB Rule Book* (January 1, 1999) at 192; *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13; Question and Answer number 3 dated September 9, 1997, reprinted in *MSRB Rule Book* (January 1, 1999) at 199. The Questions and Answers also are available from the *MSRB Rules/Interpretive Notice* section of the Board's Web site at www.msrb.org.

³ See Question and Answer number 10 dated May 24, 1994, reprinted in *MSRB Rule Book* (January 1, 1999) at 192; *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13. The Question and Answer also is available from the *MSRB Rules/Interpretive Notice* section of the Board's Web site at www.msrb.org.

Activities by Dealers and Municipal Finance Professionals During Transition Periods for Elected Issuer Officials

November 29, 2001

The MSRB has received inquiries on the applicability of rule G-37 to certain activities by dealers and municipal finance professionals relating to the transition period during which an issuer official has won an election but has not yet taken office. The definition of "contribution" in rule G-37(g)(i) includes any gift, subscription, loan, advance, or deposit of money or anything of value made for transition or inaugural expenses incurred by the successful candidate.

The MSRB stated in a Question and Answer Notice dated May 24, 1994 (Q&A number 24) that rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work; however, 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. In addition, 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. In a Question and Answer Notice dated August 18, 1994 (Q&A number 3), the MSRB stated that 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 em-

ployee 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). Thus, rule G-37 does not prohibit a municipal finance professional from serving on an issuer official's transition team or performing other transition-related activities; however, as noted above, the use of dealer resources in connection with such activity would be considered a contribution by the dealer to the issuer official thereby resulting in the dealer being prohibited from engaging in municipal securities business with the issuer for two years.

The MSRB also recognizes that dealers and their municipal finance professionals may solicit issuer officials for municipal securities business during the transition period prior to these officials taking office. In the course of making such solicitations, dealers may sometimes prepare and present materials such as financing plans and economic development studies. The provision of these types of materials to an issuer official during the transition period would not constitute contributions under rule G-37 if performed as part of a solicitation for municipal securities business.

Finally, in a Question and Answer Notice dated September 9, 1997 (Q&A number 1), the MSRB addressed whether a municipal finance professional who is entitled to vote for an issuer official may make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. 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.

Interpretation on the Effect of a Ban on Municipal Securities Business Under Rule G-37 Arising During a Pre-Existing Engagement Relating to Municipal Fund Securities

April 2, 2002

Rule G-37, on political contributions and prohibitions on municipal securities business, prohibits any broker, dealer or municipal securities dealer (a "dealer") from engaging in municipal securities business with an issuer within two years after any contribution (other than certain *de minimis* contributions) to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional. The Municipal Securities Rulemaking Board ("MSRB") has received