

JV B-D Employee Status as Municipal Finance Professional for Legacy Firm on Behalf of Which the Employee Has Solicited Municipal Securities Business: You also ask whether an employee of JV B-D who solicits municipal securities business on behalf of one of the legacy firms will be considered an MFP solely of the legacy firm on whose behalf the employee solicits municipal securities business, rather than of both legacy firms. Rule G-37(g)(iv)(B) defines MFP, in relevant part, as any associated person (including, but not limited to, any affiliated person of the dealer, as defined in Rule G-38) who solicits municipal securities business (a “solicitor MFP”). You note that this language does not expressly limit MFP status to the dealer on whose behalf the municipal securities business was solicited.

The MSRB is of the view that implicit in the concept of a solicitor MFP, as set forth in Rule G-37(g)(iv)(B), is the notion that an associated person who solicits municipal securities business on behalf of a dealer becomes an MFP of such dealer.⁵ Although an individual who solicits municipal securities business on behalf of one dealer with which he or she is associated thereby becomes an MFP of such dealer, the solicitation does not by itself result in the individual becoming an MFP of a different dealer with which such individual may be associated but for which he or she has not solicited municipal securities business. Rather, such individual would have to undertake a solicitation or another activity described in Rule G-37(g)(iv) on behalf of the second dealer in order to become an MFP of such second dealer.

The MSRB notes that Rule G-38(b)(i) defines solicitation broadly to mean, any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. The MSRB has previously provided guidance regarding the types of communications that are viewed as solicitations of municipal securities business.⁶ Depending upon specific facts and circumstances, a direct solicitation of municipal securities business by an individual on behalf of a dealer with which such individual is associated (the “directly-benefited dealer”) might also be considered an indirect solicitation of business on behalf of another dealer with which such individual is associated (the “indirectly-benefited dealer”). In conversations with issuers or other third parties, the individual must clearly indicate for which dealer he or she is soliciting business. For example, an individual who describes to issuer personnel two or more affiliated dealers as leading underwriting firms in that issuer’s state but only explicitly asks such personnel to hire one dealer (*i.e.*, the directly-benefited dealer) would likely be considered to have indirectly solicited business on behalf of the other dealer as well (*i.e.*, the indirectly-benefited dealer). An important factor in determining whether a direct solicitation on behalf of a directly-benefited dealer could also be considered an indirect solicitation on behalf of an indirectly-benefited dealer is whether the individual solely identifies his or her affiliation with the directly-benefited dealer or also identifies an affiliation with the other dealer.⁷ To the extent that multiple dealers

are identified directly or indirectly, dealers would need to take extra precautions to ensure that the solicited issuer personnel understand that the solicitation is solely on behalf of the directly-benefited dealer and that the identification of the other firm is limited and does not serve to promote the other firm.⁸ In circumstances similar to those described in this letter, dealers should have in place effective procedures to ensure that the solicitations for municipal securities business are tracked in a way that will properly classify individuals making solicitations as MFPs of the appropriate dealer. *MSRB interpretation of June 23, 2009.*

¹ Rule G-37 defines municipal securities business as the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; or the offer or sale of a primary offering of municipal securities on behalf of any issuer; or the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the broker, dealer or municipal securities dealer (“dealer”) was chosen to provide such services on other than a competitive bid basis; or the provision of remarketing agent services to or on behalf of an issuer 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.

² Rule G-37(g)(iv) defines 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; (B) any associated person (including but not limited to any affiliated person of the dealer, as defined in Rule G-38) who solicits municipal securities business; (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 (A) or (B) above; (D) any associated person who is a supervisor of any person described in (C) above 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 pursuant to Rule G-1(a); or (E) any associated person who is a member of 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) executive or management committee or similarly situated officials, if any.

³ Rule G-38 defines an affiliated person of a dealer as any person who is a partner, director, officer, employee or registered person of the dealer (or, in the case of a bank dealer, any person occupying a similar status or performing similar functions for the bank dealer) **or of an affiliated company of the dealer.**

⁴ Rule G-38 defines an affiliated company of the dealer as any entity directly or indirectly controlling, controlled by, or under common control with the broker, dealer or municipal securities dealer whose activities with respect to the dealer or with respect to any other affiliated company of the dealer are not limited solely to the solicitation of municipal securities business.

⁵ Thus, the requirements of Rule G-37 would apply to the activities of such an individual as an associated person of the dealer on whose behalf the solicitation was made. In addition, other MSRB rules of fair practice and professionalism also would apply to such individual’s solicitation and other municipal securities activities undertaken on behalf of such dealer. See Exchange Act Release No. 51561 (April 15, 2005), 70 FR 20782 (April 21, 2005) (proposing File No. SR-MSRB-2005-04); Exchange Act Release No. 52278 (August 17, 2005), 70 FR 49342 (August 23, 2005) (approving File No. SR-MSRB-2005-04).

⁶ See MSRB Notice 2006-15 (June 15, 2006).

⁷ In this regard, dealers should consider both oral and written statements, including but not limited to business cards and marketing materials, provided to solicited issuer personnel.

⁸ For example, if the individual's firm name incorporates significant elements of two affiliated dealers' firm names, such individual would need to take extra precautions to ensure that a direct solicitation on behalf of the directly-benefited dealer does not also serve as an indirect solicitation on behalf of the other dealer.

[Release No. 34-47721 \(April 23, 2003\)](#), [68 FR 23170 \(April 30, 2003\)](#); [MSRB Notice 2003-16 \(April 30, 2003\)](#)

See also:

Rule G-23 Interpretive Letters — Fairness Opinions, *MSRB interpretation of January 10, 1997.*

- **Financial advisory relationship: private placements**, *MSRB interpretation of October 5, 1999.*

Instructions for Forms G-37 and G-37x

Instructions for completing Form G-37 and G-37x can be found on the MSRB's website (www.msrb.org). Click on the link entitled Political Contributions Information and then click on the link to the instructions.

Effective August 17, 2016, all Form G-37 and Form G-37x submissions must be made electronically through EMMA Dataport (dataport.emma.msrb.org). Submissions by fax or paper submissions will not be accepted.

Rule G-37 Amendment History (since 2003)

[Release No. 34-76763 \(December 23, 2015\)](#), [80 FR 81710 \(December 30, 2015\)](#); [MSRB Notice 2016-06 \(February 27, 2016\)](#)

[Release No. 34-76653 \(December 15, 2015\)](#), [80 FR 79386 \(December 21, 2015\)](#)

[Release No. 34-69249 \(March 28, 2013\)](#), [78 FR 20156 \(April 3, 2013\)](#); [MSRB Notice 2013-09 \(April 1, 2013\)](#)

[Release No. 34-62830 \(September 2, 2010\)](#), [75 FR 54930 \(September 9, 2010\)](#); [MSRB Notice 2010-30 \(August 25, 2010\)](#)

[Release No. 34-62322 \(June 17, 2010\)](#), [75 FR 36148 \(June 24, 2010\)](#); [MSRB Notice 2010-17 \(June 14, 2010\)](#)

[Release No. 34-61647 \(March 4, 2010\)](#), [75 FR 11603 \(March 11, 2010\)](#); [MSRB Notice 2010-04 \(February 26, 2010\)](#)

[Release No. 34-61381 \(January 20, 2010\)](#), [75 FR 4126 \(January 26, 2010\)](#); [MSRB Notice 2010-01 \(January 22, 2010\)](#)

[Release No. 34-53960 \(June 8, 2006\)](#), [71 FR 34655 \(June 15, 2006\)](#); [MSRB Notice 2006-15 \(June 15, 2006\)](#)

[Release No. 34-53961 \(June 8, 2006\)](#), [71 FR 34653 \(June 15, 2006\)](#); [MSRB Notice 2006-15 \(June 15, 2006\)](#)

[Release No. 34-52496 \(September 22, 2005\)](#), [70 FR 56944 \(September 29, 2005\)](#); [MSRB Notice 2005-50 \(September 26, 2005\)](#)

[Release No. 34-51952 \(June 30, 2005\)](#), [70 FR 39836 \(July 11, 2005\)](#); [MSRB Notice 2005-33 \(June 2, 2005\)](#)

[Release No. 34-49368 \(March 5, 2004\)](#), [69 FR 11687 \(March 11, 2004\)](#); [MSRB Notice 2004-08 \(February 25, 2004\)](#)

FORM G-37

MSRB

Name of Regulated Entity: _____

Report Period: _____

I. CONTRIBUTIONS made to officials of a municipal entity (list by state)

State	Complete name, title (including any city/county/state or other political subdivision) of municipal entity official	Contributions by each contributor category (<i>i.e.</i> , for purposes of this form, dealer controlled PAC, municipal finance professional, municipal finance professional controlled PAC, non-MFP executive officer, municipal advisor, municipal advisor controlled PAC, municipal advisor professional, municipal advisor professional controlled PAC, and non-MAP executive officer). For each contribution, list contribution amount and contributor category (disclose all applicable categories for each contributor). (For example, \$500 contribution by non-MFP executive officer)
		If any contribution is the subject of an automatic exemption pursuant to Rule G-37(j), list amount of contribution and date of such automatic exemption.

II. PAYMENTS made to political parties of states or political subdivisions (list by state)

State	Complete name (including any city/county/state or other political subdivision) of political party	Payments by each contributor category
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III. CONTRIBUTIONS made to bond ballot campaigns (list by state)

A. Contributions

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued and the name of the entity issuing the municipal securities	Contributions, including the specific date the contributions were made, by each contributor category
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B. Reimbursement for Contributions

List below any payments or reimbursements, related to any disclosed bond ballot contribution, received by each dealer, municipal finance professional, non-MFP executive officer, municipal advisor, municipal advisor professional, or non-MAP executive officer from any third party, including the amount paid and the name of the third party making such payments or reimbursements.

IV. MUNICIPAL ENTITIES with which the regulated entity has engaged in municipal securities business or municipal advisory business (list by state)

A. Municipal Securities Business

State	Complete name of municipal entity and city/county	Type of municipal securities business (negotiated underwriting, private placement, financial advisor, or remarketing agent)
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B. Municipal Advisory Business

State	Complete name of municipal entity and city/county	Type of municipal advisory business (advice or solicitation) (and in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, 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 or investment advisory services))
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C. Ballot-Approved Offerings

Full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which each contributor category has made a contribution and the reportable date of selection on which the regulated entity was selected to engage in the municipal securities business or municipal advisory business.

Full Name of Municipal Entity	Full Issue Description	Reportable Date of Selection
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Signature: _____ **Date:** _____
(must be officer of regulated entity)

Name: _____

Address: _____

Phone: _____

Submit to the Municipal Securities Rulemaking Board a completed form quarterly by due date (specified by the MSRB)

FORM G-37x

MSRB

Name of Regulated Entity:

The undersigned, on behalf of the regulated entity identified above, does hereby certify that such regulated entity did not engage in “municipal securities business” or “municipal advisory business” (in each case, as defined in Rule G-37) during the eight full consecutive calendar quarters ending immediately on or prior to the date of this Form G-37x.

The undersigned, on behalf of such regulated entity, does hereby acknowledge that, notwithstanding the submission of this Form G-37x to the MSRB, such regulated entity will be required to:

- (1) submit Form G-37 for each calendar quarter unless it has met all of the requirements for an exemption set forth in Rule G-37(e)(ii) for such calendar quarter;
- (2) undertake the recordkeeping obligations set forth in Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, at such time as it no longer qualifies for the relevant exemption(s) set forth in Rule G-8(a)(xvi)(M) and/or Rule G-8(h)(iii)(M);
- (3) undertake the disclosure obligations set forth in Rule G-37(e), including in particular the disclosure obligations under paragraph (e)(iii) thereof, at such time as it no longer qualifies for the exemption set forth in Rule G-37(e)(ii)(B); and
- (4) submit a new Form G-37x in order to again meet the requirements for the exemption set forth in Rule G-37(e)(ii)(B) in the event that the regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the date of this Form G-37x and thereafter wishes to qualify for the exemption.

Signature: _____ **Date:** _____
(must be officer of regulated entity)

Name: _____ **Phone:** _____

Address: _____

Submit to the Municipal Securities Rulemaking Board

Rule G-38

Solicitation of Municipal Securities Business

(a) *Prohibited Payments.* No broker, dealer or municipal securities dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer.

(b) *Definitions.* For purposes of this rule, the following terms shall have the following meanings:

(i) The term “solicitation” means a direct or indirect communication by any person with an issuer for the purpose of obtaining or retaining municipal securities business.

(ii) The term “affiliated person of the broker, dealer or municipal securities dealer” means any person who is a partner, director, officer, employee or registered person of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, any person occupying a similar status or performing similar functions for the bank dealer) or of an affiliated company of the broker, dealer or municipal securities dealer.

(iii) The term “affiliated company of the broker, dealer or municipal securities dealer” means any entity directly or indirectly controlling, controlled by, or under common control with the broker, dealer or municipal securities dealer whose activities with respect to the broker, dealer or municipal securities dealer or with respect to any other affiliated company of the broker, dealer or municipal securities dealer are not limited solely to the solicitation of municipal securities business.

(iv) The term “registered person” means any associated person of the broker, dealer or municipal securities dealer duly qualified in one or more categories of qualification under Rule G-3 or duly qualified and registered in one or more categories of registration under the rules of a registered securities association.

(v) The terms “issuer,” “municipal securities business” and “payment” shall have the meanings set forth in Rule G-37(g).

Rule G-38 Interpretations

Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38

June 8, 2006

Municipal Securities Rulemaking Board (“MSRB”) Rule G-38, on solicitation of municipal securities business, defines “solicitation” as any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. This definition is important for purposes of determining whether payments made by a broker, dealer or municipal securities dealer (“dealer”) to persons who are not affiliated persons of the dealer are prohibited under Rule

G-38.¹ In addition, the definition is central to determining whether communications by dealer personnel would result in such personnel being considered municipal finance professionals (“MFPs”) of the dealer for purposes of Rule G-37, on political contributions and prohibitions on municipal securities business. This notice provides interpretive guidance relating to the status of certain types of communications as solicitations for purposes of Rules G-37 and G-38.

Purpose of Communication

The concept of solicitation under Rules G-37 and G-38 includes as a central element the notion that the communication occurs with the purpose of obtaining or retaining municipal securities business. The determination of whether a particular communication is a solicitation is dependent upon the specific facts and circumstances relating to such communication. As a general proposition, any communication made under circumstances reasonably calculated to obtain or retain municipal securities business for the dealer may be considered a solicitation unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining municipal securities business. This notice provides examples of circumstances in which a communication may or may not be considered a solicitation. These examples are illustrative only and are not the only instances in which a solicitation may be deemed to have or have not occurred.

Limited Communications with Issuer Representative

If an issuer representative asks an affiliated person of a dealer whether the dealer has municipal securities capabilities, such affiliated person generally would not be viewed as having solicited municipal securities business if he or she provides a limited affirmative response, together with either providing the issuer representative with contact information for an MFP of the dealer or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her. Similarly, if an issuer representative is discussing governmental cash flow management issues with an affiliated person of a dealer who concludes, in his or her professional judgment, that an appropriate means of addressing the issuer’s needs may be through an issue of municipal securities, the affiliated person generally would not be viewed as having solicited business if he or she provides a limited communication to the issuer representative that such alternative may be appropriate, together with either providing the issuer representative with contact information for an MFP or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her.

In the examples above, if the affiliated person receives compensation such as a finder’s or referral fee for such business or if the affiliated person engages in other activities that could be deemed a solicitation with respect to such business (for example, attending presentations of the dealer’s municipal finance capabilities or responding to a request for proposals), the affiliated person generally would be viewed as having solicited the municipal securities business. The MSRB has

long regarded receipt of a finder's fee for bringing municipal securities business to the dealer and activities such as attending presentations to issuer personnel of the dealer's municipal finance capabilities or responding to issuer requests for proposals as presumptively constituting solicitations of municipal securities business and does not view this notice as altering such presumption.

Promotional Communication

The MSRB understands that an affiliated person of a dealer may provide information to potential clients and others regarding the general capabilities of the dealer through either oral or written communications. Any such communication that is not made with the purpose of obtaining or retaining municipal securities business would not be considered a solicitation. Thus, depending upon the specific facts and circumstances, a communication that merely lists the significant business lines of a dealer without further descriptive information and which does not give the dealer's municipal securities practice a place of prominence within such listing generally would not be considered a solicitation unless the facts and circumstances indicate that it was aimed at obtaining or retaining municipal securities business. To the extent that a communication, such as a dealer brochure or other promotional materials, contains more than a mere listing of business lines, such as brief descriptions of each business line (including its municipal securities capabilities), determining whether such communication is a solicitation depends upon whether the facts and circumstances indicate that it was undertaken for the purpose of obtaining or retaining municipal securities business. The nature of the information provided and the manner in which it is presented are relevant factors to consider. Although no single factor is necessarily controlling in determining whether a communication was undertaken for the purpose of obtaining or retaining municipal securities business, the following considerations, among others, may often be relevant: (i) whether the municipal securities practice is the only business line included in the communication that would reasonably be of interest to an issuer representative; (ii) whether the portions of the communication describing the dealer's municipal securities capabilities are designed to garner more attention than other portions describing different business lines; (iii) whether the communication contains quantitative or qualitative information on the nature or extent of the dealer's municipal securities capabilities that is promotional in nature (*e.g.*, quantitative or qualitative rankings, claims of expertise, identification of specific transactions, language associated with "puffery," etc.); and (iv) whether the dealer is currently seeking to obtain or retain municipal securities business from the issuer.

Work-Related Communications

Communications that are incidental to undertaking tasks to complete municipal securities business for which the dealer has already been engaged generally would not be solicitations. For example, if a dealer has engaged an independent contrac-

tor as a cash flow consultant to provide expert services on a negotiated underwriting for which the dealer has already been selected and the contractor communicates with the issuer on cash flow matters relevant to the financing, such communication would not be a solicitation under Rule G-38. Similarly, if a dealer has already been selected to serve as the underwriter for an airport financing and a non-MFP affiliated person of the dealer who normally works on airline corporate matters is used to provide his or her expertise to complete the financing, communications in this regard by the affiliated person with the issuer would not be a solicitation under Rule G-38. In addition, the fact that the work product of persons such as those described above may be used by MFPs of the dealer in their solicitation activities would not make the producer of the work product a solicitor unless such person personally presents his or her work to the issuer in connection with soliciting the municipal securities business.

Communications with Conduit Borrowers

The MSRB understands that dealers often work closely with private entities on their capital and other financing needs. In many cases, this work may evolve into a conduit borrowing through a conduit issuer. Although the ultimate obligor on such a financing is the private entity, if the dealer acts as underwriter for a financing undertaken through a conduit issuer on other than a competitive bid basis, it is engaging in municipal securities business for purposes of Rule G-37. The selection of the underwriter for such a financing frequently is made by the conduit borrower. While in many cases conduit issuers have either formal procedures or an informal historical practice of accepting the dealer selected by the conduit borrower, some conduit issuers may set minimum standards that dealers must meet to qualify to underwrite a conduit issue, and other conduit issuers may have a slate of dealers selected by the conduit issuer from which the conduit borrower chooses the underwriter for its issue. Still other conduit issuers may defer to the conduit borrower's selection of lead underwriter but may require the underwriting syndicate to include additional dealers selected by the issuer or selected by the conduit borrower from a slate of issuer-approved underwriters, often with the purpose of ensuring participation by local dealers or historically disadvantaged dealers. A smaller number of conduit issuers retain more significant control over which dealers act as underwriters, either by making the selection for the conduit borrower or by considering the conduit borrower's selection to be merely a suggestion which in some cases the conduit issuer does not follow. However, in virtually all cases, the conduit issuer will maintain ultimate power to control which dealer underwrites a conduit issue since the conduit issuer has discretion to withhold its agreement to issue the securities through any particular dealer.

From a literal perspective, any communication by a dealer with a conduit borrower that is intended to cause the borrower to select the dealer to serve as underwriter for a conduit issue could be considered a solicitation of municipal securities business. This is because the conduit borrower

eventually communicates its selection of the dealer to act as underwriter to the conduit issuer for approval. This series of communications would, by its terms, constitute an indirect communication by the dealer through the conduit borrower to the conduit issuer for the purpose of obtaining or retaining municipal securities business.

However, the MSRB believes that a dealer's communication with a conduit borrower generally should not be deemed an indirect solicitation of the issuer unless a reasonable nexus can be established between the making of contributions to officials of the conduit issuer within the meaning of Rule G-37 and the selection of the underwriter for such conduit financing. A determination of whether such a reasonable nexus could exist depends on the specific facts and circumstances.

Further, if an affiliated person of a dealer who is providing investment banking services and corporate financing advice to a private company concludes, in his or her professional judgment, that an appropriate financing alternative may be a conduit financing, a limited communication to the company by the affiliated person that such financing alternative may be appropriate, together with the provision to the company of contact information for an MFP of the dealer, generally would not be presumed to be a solicitation. Alternatively, the affiliated person could inform the company that dealer personnel who handle municipal securities business will contact it. In addition, if a dealer has already been selected by the conduit borrower to serve as the underwriter for a conduit financing and a non-MFP affiliated person of the dealer communicates with the conduit borrower in furtherance of the financing, such communications by the affiliated person would not be a solicitation under Rule G-38.

Communications by Non-Affiliated Professionals

So long as non-affiliated persons providing legal, accounting, engineering or other professional services in connection with specific municipal securities business are not being paid directly or indirectly by a dealer for communicating with an issuer for the purpose of obtaining or retaining municipal securities business for the dealer (*i.e.*, they are paid solely for their provision of legal, accounting, engineering or other professional services with respect to the business), they would not become subject to Rule G-38. Dealers are reminded that the term "payment" as used in Rules G-37 and G-38 refers to anything of value and can, depending on the specific facts and circumstances, include quid pro quo arrangements whereby a non-affiliated person solicits municipal securities business for the dealer in exchange for being hired by the dealer to provide other unrelated services.

¹ The term "affiliated person" is defined in Rule G-38(b)(ii).

Reminder Notice on Prohibited Payments to Non-Affiliated Persons for Solicitations of Municipal

Securities Business Under Rule G-38 and Form G-38t Submission Requirements

June 12, 2007

Rule G-38, on solicitation of municipal securities business, prohibits any broker, dealer or municipal securities dealer ("dealer") from making a direct or indirect payment to any person who is not an affiliated person¹ of the dealer for a solicitation of municipal securities business.² The current version of Rule G-38 replaced a prior version of the rule, relating to the use of consultants, effective August 29, 2005.³ Thus, with one narrowly defined exception discussed below, since August 29, 2005, dealers have been prohibited from making any payments to persons not affiliated with the dealer (including but not limited to any former consultant under the prior version of Rule G-38) for solicitations of municipal securities business.

A dealer is permitted to make a payment to a former consultant who is not an affiliated person of the dealer for a solicitation of municipal securities business if the payment is made solely for solicitation activities undertaken by such former consultant on or prior to August 29, 2005. A transitional payment is permitted **only if** (A) the former consultant has not solicited municipal securities business from any issuer on behalf of the dealer after August 29, 2005 **and** (B) the dealer submits Form G-38t to the MSRB for **each** calendar quarter during which such payment to the consultant is made or remains pending. The dealer must disclose on its initial and all subsequent Form G-38t submissions each item of municipal securities business for which a transitional payment remains pending and the amount of such pending payment, together with other required information, until such quarter in which the payment is finally made.⁴

Dealers are required to submit Form G-38t to the MSRB for a calendar quarter **only if** a transitional payment to a former consultant is paid during such quarter or remains pending (*i.e.*, payable at a future date) as of such quarter. If no such payments are made or remain pending in any calendar quarter, Form G-38t is **not** required to be submitted and dealers should **not** make such submissions. Dealers should note that pending payments must continuously be disclosed on Form G-38t for every calendar quarter, beginning with the quarter ended on September 30, 2005 and each quarter thereafter, until paid. **If a pending payment has not been disclosed on Form G-38t for any one or more prior calendar quarters, such payment may no longer be made under the transitional payment provision of Rule G-38 and the dealer would violate Rule G-38 if it subsequently makes such a payment.**

The MSRB wishes to remind dealers that Rule G-38 strictly prohibits all payments by a dealer to a non-affiliated person for solicitation activities undertaken after August 29, 2005, even if such solicitation activities are undertaken pursuant to a contract entered into by the dealer with the non-affiliated person on or prior to August 29, 2005. **In effect, all paid solicitation activities by non-affiliated persons on behalf**

of dealers were required to cease as of August 30, 2005, regardless of whether such activities arise from earlier contractual commitments, since any payments by dealers for such activities would violate Rule G-38. Further, as noted above, one of the conditions for permitting transitional payments for solicitations occurring on or prior to August 29, 2005 is that the former consultant does not solicit municipal securities business from **any** issuer on behalf of the dealer at any time after August 29, 2005. Thus, if a dealer has a pending payment to a former consultant for a solicitation made to an issuer on or prior to August 29, 2005, a subsequent solicitation on behalf of the dealer by such former consultant to the same or a different issuer after August 29, 2005 would disqualify such pending payment from being treated as a valid transitional payment under Rule G-38.

¹ An affiliated person of a dealer is any partner, director, officer, employee or registered person of the dealer or of an affiliated company. A registered person of a dealer is any associated person of the dealer qualified under MSRB or NASD professional qualification requirements. An affiliated company of a dealer is any entity that controls, is controlled by or is under common control with the dealer and whose activities are not limited solely to the solicitation of municipal securities business.

² A solicitation is a direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. Guidance on the definition of solicitation is provided in *Rule G-38 Interpretation – Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38, June 8, 2006, reprinted in MSRB Rule Book*. Municipal securities business includes negotiated underwritings, private placements and other agency offerings, financial advisory or consultant engagements, and remarketing agent engagements.

³ Under the prior version of Rule G-38, dealers were required, among other things, to make certain disclosures to issuers and to the MSRB in connection with their use of paid consultants to communicate with issuers to obtain or retain municipal securities business.

⁴ *Instructions for Forms G-37, G-37x and G-38t*, available in the Political Contributions Information area of the MSRB's website at www.msrb.org, provides detailed instructions for completing Form G-38t.

Interpretive Letters

See also:

Rule G-37 Interpretive Letter – Solicitation activity on behalf of affiliated company, MSRB interpretation of June 23, 2009.

Rule G-38 Amendment History (since 2003)

[Release No. 34-85699 \(April 22, 2019\), 84 FR 17897 \(April 26, 2019\); MSRB Notice 2019-11 \(April 10, 2019\)](#)

[Release No. 34-53961 \(June 8, 2006\), 71 FR 34653 \(June 15, 2006\); MSRB Notice 2006-15 \(June 15, 2006\)](#)

[Release No. 34-52278 \(August 17, 2005\), 70 FR 49342 \(August 23, 2005\); MSRB Notice 2005-44 \(August 18, 2005\)](#)

Rule G-39

Telemarketing

(a) *General Telemarketing Requirements.* No broker, dealer or municipal securities dealer shall initiate any outbound telephone call to:

(i) *Time of Day Restriction.* Any residence of a person before the hour of 8:00 a.m. or after 9:00 p.m. (local time at the called party's location), unless

(A) the broker, dealer or municipal securities dealer has an established business relationship with the person pursuant to paragraph (n)(xii)(A),

(B) the broker, dealer or municipal securities dealer has received that person's express prior consent, or

(C) the person called is a broker, dealer or municipal securities dealer;

(ii) *Firm-Specific Do-Not-Call List.* Any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the broker, dealer or municipal securities dealer; or

(iii) *National Do-Not-Call List.* Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(iv) *Compliance with Other Requirements.* This rule does not affect the obligation of any broker, dealer or municipal securities dealer that engages in telemarketing to comply with relevant state and federal laws and rules, including, but not limited to, the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101 – 6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

(b) *National Do-Not-Call List Exceptions.* A broker, dealer or municipal securities dealer making outbound telephone calls will not be liable for violating paragraph (a)(iii) if:

(i) *Established Business Relationship Exception.* The broker, dealer or municipal securities dealer has an established business relationship with the recipient of the call. A person's request to be placed on the broker, dealer or municipal securities dealer's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call list provision for that broker, dealer or municipal securities dealer even if the person continues to do business with the broker, dealer or municipal securities dealer;

(ii) *Prior Express Written Consent Exception.* The broker, dealer or municipal securities dealer has obtained the person's prior express written consent. Such consent must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq. ("E-Sign Act")) between the person and the broker, dealer or

municipal securities dealer, which states that the person agrees to be contacted by the broker, dealer or municipal securities dealer and includes the telephone number to which the calls may be placed; or

(iii) *Personal Relationship Exception.* The broker, dealer or municipal securities dealer making the call has a personal relationship with the recipient of the call.

(c) *Safe Harbor Provision.* A broker, dealer or municipal securities dealer making outbound telephone calls will not be liable for violating paragraph (a)(iii) if the broker, dealer or municipal securities dealer demonstrates that the violation is the result of an error and that as part of the broker, dealer or municipal securities dealer's routine business practice, it meets the following standards:

(i) *Written procedures.* The broker, dealer or municipal securities dealer has established and implemented written procedures to comply with the national do-not-call rules;

(ii) *Training of personnel.* The broker, dealer or municipal securities dealer has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the national do-not-call rules;

(iii) *Recording.* The broker, dealer or municipal securities dealer has maintained and recorded a list of telephone numbers that it may not contact; and

(iv) *Accessing the national do-not-call database.* The broker, dealer or municipal securities dealer uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(d) *Procedures.* Prior to engaging in telemarketing, a broker, dealer or municipal securities dealer must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(i) *Written policy.* Brokers, dealers and municipal securities dealers must have a written policy for maintaining a do-not-call list.

(ii) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(iii) *Recording, disclosure of do-not-call requests.* If a broker, dealer or municipal securities dealer receives a request from a person not to receive calls from that broker, dealer or municipal securities dealer, the broker, dealer or municipal securities dealer must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Brokers, dealers and municipal securities dealers must honor a person's do-not-call request within a reasonable time from the date such request is

made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the broker, dealer or municipal securities dealer on whose behalf the outbound telephone call is made, the broker, dealer or municipal securities dealer on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(iv) *Identification of sellers and telemarketers.* A broker, dealer or municipal securities dealer making an outbound telephone call must provide the called party with the name of the individual caller, the name of the broker, dealer or municipal securities dealer, an address or telephone number at which the broker, dealer or municipal securities dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) *Affiliated persons or entities.* In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the broker, dealer or municipal securities dealer making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) *Maintenance of do-not-call lists.* A broker, dealer or municipal securities dealer making outbound telephone calls must maintain a permanent record of a person's request not to receive further calls.

(e) *Wireless Communications.* The provisions set forth in this rule are applicable to brokers, dealers and municipal securities dealers making outbound telephone calls to wireless telephone numbers.

(f) *Outsourcing Telemarketing.* If a broker, dealer or municipal securities dealer uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the broker, dealer or municipal securities dealer remains responsible for ensuring compliance with all provisions contained in this rule.

(g) *Caller Identification Information.*

(i) Any broker, dealer or municipal securities dealer that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the broker, dealer or municipal securities dealer's telephone carrier, the name of the broker, dealer or municipal securities dealer, to any caller identification service in use by a recipient of an outbound telephone call.

(ii) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(iii) Any broker, dealer or municipal securities dealer that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(h) *Unencrypted Consumer Account Numbers.* No broker, dealer or municipal securities dealer shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

(i) *Submission of Billing Information.* For any telemarketing transaction, a broker, dealer or municipal securities dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(i) In any telemarketing transaction involving pre-acquired account information and a free-to-pay conversion feature, the broker, dealer or municipal securities dealer must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(i)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving pre-acquired account information not described in paragraph (i)(i), the broker, dealer or municipal securities dealer must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(ii)(A).

(j) *Abandoned Calls.*

(i) No broker, dealer or municipal securities dealer shall "abandon" any outbound telephone call. An outbound call is "abandoned" if a called person answers it and the call is not connected to a broker, dealer or municipal securities dealer within two seconds of the called person's completed greeting.

(ii) A broker, dealer or municipal securities dealer shall not be liable for violating paragraph (j)(i) if:

(A) the broker, dealer or municipal securities dealer employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the broker, dealer or municipal securities dealer, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a broker, dealer or municipal securities dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the broker, dealer or municipal securities dealer promptly plays a recorded message that states the name and telephone number of the broker, dealer or municipal securities dealer on whose behalf the call was placed; and

(D) the broker, dealer or municipal securities dealer retains records establishing compliance with paragraph (j)(ii)

(k) *Prerecorded Messages.*

(i) No broker, dealer or municipal securities dealer shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(ii)(C) unless:

(A) the broker, dealer or municipal securities dealer has obtained from the recipient of the call an express agreement, in writing, that:

(1) the broker, dealer or municipal securities dealer obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the broker, dealer or municipal securities dealer to place prerecorded calls to such person;

(2) the broker, dealer or municipal securities dealer obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(3) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific broker, dealer or municipal securities dealer; and

(4) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the broker, dealer or municipal securities dealer allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(iv), followed immediately by a disclosure of one or both of the following:

(1) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out

mechanism to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii) at any time during the message. The mechanism must:

(a) automatically add the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) once invoked, immediately disconnect the call; and

(c) be available for use at any time during the message;

(2) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(a) automatically adds the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) immediately thereafter disconnects the call; and

(c) is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the broker, dealer or municipal securities dealer complies with all other requirements of this rule and other applicable federal and state laws.

(ii) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

(l) *Credit Card Laundering.* Except as expressly permitted by the applicable credit card system, no broker, dealer or municipal securities dealer shall:

(i) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the broker, dealer or municipal securities dealer;

(ii) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or