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Page 1 of * 335

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2015 - * 14
Amendment No. (req. for Amendments *)

Filing by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- 19b-4(f)(1)
- 19b-4(f)(2)
- 19b-4(f)(3)
- 19b-4(f)(4)
- 19b-4(f)(5)
- 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change consisting of proposed amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, Rule G-8, on books and records, Rule G-9, on preservation of records, and Forms G-37 and G-37x

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Michael Last Name * Post

Title * General Counsel - Regulatory Affairs

E-mail * mpost@msrb.org

Telephone * (202) 838-1500 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/16/2015

By Ronald W. Smith

(Name *)

(Title *)

Corporate Secretary

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1422382132618,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board (the "MSRB" or "Board") is filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change to Rule G-37, on political contributions made by brokers, dealers and municipal securities dealers ("dealers") and prohibitions on municipal securities business, to apply to municipal advisors. The proposed rule change consists of: (i) proposed amendments to Rule G-37; (ii) proposed amendments making changes to Rules G-8, on books and records, and G-9, on preservation of records; and (iii) proposed amendments to Forms G-37 and G-37x (the "proposed rule change"). The MSRB requests that the proposed rule change be approved with an effective date to be announced by the MSRB in a regulatory notice published no later than two months following the Commission approval date, which effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following the Commission approval date; provided, however, that any prohibition under Rule G-37 already in effect before the effective date of the proposed rule change shall be of the scope, and continue for the length of time, provided under Rule G-37 as in effect at the time of the contribution that resulted in such prohibition.

(a) The text of the proposed amendments to Forms G-37 and G-37x is attached as Exhibit 3 and the text of the proposed amendments to Rules G-37, G-8 and G-9 is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its October 29 - 31, 2014 meeting. Questions concerning this filing may be directed to Michael L. Post, General Counsel – Regulatory Affairs, Sharon Zackula, Associate General Counsel, or Saliha Olgun, Assistant General Counsel, at 202-838-1500.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") amended Section 15B of the Exchange Act[3] to provide for the regulation by the Commission and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons.[4] The Dodd-Frank Act establishes a federal regulatory regime that requires municipal advisors to register with the Commission[5] and prohibits municipal advisors from engaging in any fraudulent, deceptive, or manipulative act or practice.[6] The Dodd-Frank Act also grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities.[7]

As charged by Congress, the MSRB is in the process of developing a comprehensive regulatory framework for municipal advisors and their associated persons, including the proposed amendments to Rule G-37.[8] The proposed rule change would

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3 15 U.S.C. 78o-4.

4 Pub. Law No. 111-203, 124 Stat. 1376 (2010).

5 See Section 15B(a)(1)(B) of the Exchange Act (15 U.S.C. 78o-4(a)(1)(B)).

6 See Section 15B(a)(5) of the Exchange Act (15 U.S.C. 78o-4(a)(5)).

7 See Section 15B(b)(2) of the Exchange Act (15 U.S.C. 78o-4(b)(2)).

8 In furtherance of this framework, the MSRB adopted Rule G-44 regarding the supervisory and compliance obligations of municipal advisors. See Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014) (File No. SR-MSRB-2014-06) (SEC order approving Rule G-44). The MSRB also adopted amendments to Rule G-20, on gifts, gratuities and non-cash compensation, to extend provisions of the rule to municipal advisors and Rule G-3 to establish registration and professional qualification requirements for municipal advisors. See Release No. 34-76381 (November 6, 2015), 80 FR 70271 (November 13, 2015) (File No. SR-MSRB-2015-09) (SEC order approving amendments to Rule G-20 on gifts, gratuities and non-cash compensation); and Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015) (File No. SR-MSRB-2014-08) (SEC order approving registration and professional qualification requirements for municipal advisor representatives and municipal advisor principals) ("Order Approving MA Qualification Requirements"). The MSRB also proposed Rule G-42, regarding duties of non-solicitor municipal advisors. See Release No. 34-74860 (May 4, 2015), 80 FR 26752 (May 8, 2015) (File No. SR-MSRB-2015-03) (notice of filing and request for comment) ("Proposed Rule G-42 Filing"); Release No. 34-75737 (August 19, 2015), 80 FR 51645 (August 25, 2015) (notice of filing of Amendment No. 1 and request for comment); and Release No. 34-

extend to municipal advisors through targeted amendments to Rule G-37 the regulatory policies in Rule G-37 that address "pay to play" practices and the appearance thereof. "Pay to play" practices typically involve a person or an entity making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a quid pro quo for the receipt of government contracts. The proposed rule change would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing an area of potential corruption, or appearance of corruption, in connection with the awarding of municipal advisory business, which impedes a free and open market in municipal securities and may harm investors, issuers, municipal entities and obligated persons.

Such practices among municipal advisors create conflicts of interest and give rise to circumstances suggesting quid pro quo corruption involving public officials of municipal entities resulting from such conflicted interests and the receipt of political contributions. In the worst cases, such practices involve the actual corruption of public officials of municipal entities. Even if actual quid pro quo corruption does not occur, the appearance of quid pro quo corruption in the awarding of municipal advisory business (or municipal securities business or engagements to provide investment advisory services when a municipal advisor solicits on behalf of dealers or investment advisers) may be as damaging to the integrity of the municipal securities market as actual quid pro quo corruption. Further, the appearance may breed actual quid pro quo corruption as municipal advisors may feel a need to make quid pro quo political contributions in order to be considered a candidate for the award of business that they believe will only be awarded to contributors.[9] Similarly, public officials may feel the need to engage in quid pro quo corruption in order to avoid a financial disadvantage to their campaigns as

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76420 (November 10, 2015) 80 FR 71858 (November 17, 2015) (File No. SR-MSRB-2015-03) (notice of filing of Amendment No. 2 and request for comment).

[9] Rule G-37 was first adopted in the wake of similar dealer concerns in the municipal securities market. See Blount v. SEC, 61 F.3d 938, 945-946 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996) ("Blount") citing Thomas T. Vogel Jr., Politicians Are Mobilizing to Derail Ban on Muni Underwriters, Wall St. J., December 27, 1993, (reporting about some officials rallying support for a boycott of firms that vowed to halt municipal campaign giving); John M. Doyle, Muni Bond Market Faces Scrutiny Allegations Include Influence Peddling, Cincinnati Post, March 1, 1994 ("Of primary concern to most reformers is the practice of 'pay to play,' the belief that political contributions by firms are necessary to compete for muni bond underwriting business"); John D. Cummins, Blount v. SEC: An End for Pay-to-Play, Bond Buyer, August 21, 1995 (noting that support for "pay to play" reform "grew out of a desire to end the perceived abuses" as well as "individual bankers who were simply tired of writing checks to politicians").

compared to other officials they believe engage in such practices. Even in the absence of actual quid pro quo corruption, the mere appearance of such corruption stifles and creates artificial barriers to competition for municipal advisors that believe that "pay to play" practices are a prerequisite to being awarded municipal advisory business (or municipal securities business or engagements to provide investment advisory services for broker, dealer, municipal securities dealer or investment adviser clients of a municipal advisor soliciting such business on behalf of clients) but are unwilling or unable to engage in such practices.

"Pay to play" practices are rarely explicit: participants typically do not let it be known that contributions or payments are made or accepted for the purpose of influencing the selection of a municipal advisor (or dealer, municipal advisor or investment adviser on behalf of which a municipal advisor acts as a solicitor).[10] Nonetheless, as discussed infra,[11] numerous developments in recent years have led the MSRB to conclude that, at least in some instances, the awarding of municipal advisory business (or municipal securities business or engagements to provide investment advisory services when a municipal advisor solicits on behalf of dealers or investment advisers) has been influenced, or has appeared to have been influenced, by "pay to play" practices.

In the Board's view, continued "pay to play" practices by professionals seeking or engaging in municipal advisory business (including municipal advisors soliciting municipal entities on behalf of dealers, municipal advisors and investment advisers) and the awarding of business by conflicted officials erodes public trust and confidence in the fairness of the municipal securities market, impedes a free and open market in municipal securities, may damage the integrity of the market, and may increase costs borne by municipal entities, issuers, obligated persons and investors. The MSRB believes that extending the policies embodied in Rule G-37 to municipal advisors through targeted amendments to Rule G-37 will help ensure common standards for dealers and municipal advisors, who operate in the same market, and frequently with the same clients.

Rule G-37

In the years preceding the MSRB's adoption of Rule G-37, widespread reports regarding the existence of "pay to play" practices had fueled industry, regulatory and public concerns, calling into question the integrity, fairness, and sound operation of the

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[10] See Blount, 61 F.3d at 945 ("While the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather indirectly…."); id. ("[N]o smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic.").

[11] See infra, nn. 99-102.

municipal securities market.[12] When proposing Rule G-37 in 1994, the Board believed, based on the Board's review of comment letters and other information, that there were "numerous instances in which dealers have been awarded municipal securities business based on their political contributions."[13] Moreover, in the Board's view, even when impropriety had not occurred:

> political contributions create a potential conflict of interest for issuers, or at the very least the appearance of a conflict, when dealers make contributions to officials responsible for, or capable of influencing the outcome of, the awarding of municipal securities business and then are awarded business by issuers associated with these officials.[14]

The problems associated with "pay to play" practices undermined investor confidence in the municipal securities market, which was essential to the liquidity and capital-raising ability of the market.[15] Further, such practices stifled and created artificial barriers to competition, thereby harming investors and the public interest and increasing market costs associated with the municipal securities business.[16] In light of these concerns, the Board determined that regulatory action was necessary to protect investors and maintain the integrity of the municipal securities market.[17] In approving Rule G-37 in 1994, the Commission affirmed that the rule was adopted "to address the real as well as perceived abuses resulting from 'pay to play' practices in the municipal securities market."[18] The Commission also noted that "[Rule G-37] represents a balanced response to allegations of corruption in the municipal securities market."[19]

Current Rule G-37 is a comprehensive regulatory regime composed of several separate and mutually reinforcing requirements for dealers. Chief among them are:

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12 See Release No. 34-33868 (April 7, 1994), 59 FR 17621, 17623 (April 13, 1994) (File No. SR-MSRB-94-02) ("Rule G-37 Approval Order").

13 See Release No. 34-33482 (January 14, 1994), 59 FR 3389, 3390 (January 21, 1994) (File No. SR-MSRB-94-02) ("Notice of Proposed Rule G-37").

14 See id. at 3390.

15 See id.

16 See id.

17 See id.

18 See Rule G-37 Approval Order, at 17624.

19 Id. at 17628.

limitations on business activities that are triggered by the making of certain political contributions; limitations on solicitation and coordination of political contributions; and disclosure and recordkeeping regarding political contributions and municipal securities business.

This regime is widely recognized as having significantly curbed "pay to play" practices and the appearance of such practices in the municipal securities market.[20] Rule G-37 also has been used as a model by various federal regulators to create "pay to play" regulations in other segments of the financial services industry. Pursuant to the Advisers Act,[21] the SEC adopted Rule 206(4)-5 (the "IA Pay to Play Rule"), which applies to investment advisers and political contributions.[22] The Commodity Futures Trading Commission subsequently adopted Rule 23.451, a rule regarding swap dealers and political contributions, (the "Swap Dealer Rule"),[23] pursuant to the Commodity Exchange Act.[24]

Rule G-37 currently applies to dealers in the following respects. Rule G-37(b) prohibits dealers from engaging in municipal securities business with an issuer within two years after a triggering contribution to an official of such issuer is made by: (i) the dealer; (ii) any person who is a municipal finance professional ("MFP") of the dealer; or (iii) any political action committee ("PAC") controlled by either the dealer or any MFP of the dealer (the "ban on municipal securities business").[25] Under the principal exclusion to the ban on municipal securities business, provided in Rule G-37(b), a contribution will not trigger a ban on municipal securities business if made by an MFP to an official for whom the MFP is entitled to vote, if such contribution, together with any other contributions made by the MFP to the official, do not exceed $250 per election (a "de minimis contribution"). There is no de minimis exclusion for a contribution to an official for whom an MFP is not entitled to vote.

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20 See Release No. IA-3043 (July 1, 2010), 75 FR 41018, at 41020, 41026-41027 (July 14, 2010) (File No. S7-18-09) (SEC order adopting a rule regarding political contributions made by investment advisers pursuant to the Investment Advisers Act of 1940 ("Advisers Act"), ("Order Adopting IA Pay to Play Rule")); id., at n. 101 and accompanying text; comment letter from Sanchez, infra, n. 113; comment letter from SIFMA, infra, n. 113.

21 See 15 U.S.C. 80b-1 et seq.

22 17 CFR 275.206(4)-5.

23 17 CFR 23.451.

24 See Commodity Exchange Act ("CEA"), 7 U.S.C. 1 et seq.

25 Hereinafter, a contribution that triggers a ban on municipal securities business, or, as discussed infra, municipal advisory business, or both, is a "triggering contribution."

Current Rule G-37(c)(i) prohibits dealers and their MFPs from soliciting or coordinating contributions to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business. Rule G-37(c)(ii) prohibits dealers and certain of their MFPs[26] from soliciting or coordinating payments to a political party of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Rule G-37(d) is an anti-circumvention provision prohibiting dealers and their MFPs from, directly or indirectly, through any person or means, doing any act that would result in a violation of section (b) or (c) of the rule. Rule G-37(e) requires dealers to disclose to the MSRB, for public dissemination, certain information related to their contributions and their municipal securities business.[27]

Currently, Rule G-37 also applies to certain activities of dealers that are now defined as municipal advisory activities under the Exchange Act and Exchange Act Rule 15Ba1-1(e).[28] Specifically, Rule G-37 defines as a type of MFP a person "primarily engaged in municipal securities representative activities" other than sales with natural persons.[29] Such municipal securities representative activities may include the provision of "financial advisory or consultant services for issuers in connection with the issuance of municipal securities."[30] Most, and perhaps all, of these financial advisory and consultant

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26 MFPs as described in current paragraphs (A) through (C) of current Rule G-37(g)(iv) are subject to the prohibition in Rule G-37(c)(ii). (Paragraph (A) refers to an associated person primarily engaged in municipal securities representative activities, paragraph (B), to an associated person who solicits municipal securities business, and paragraph (C), to an associated person who is both a municipal securities principal or sales principal and a supervisor of the personnel described in paragraph (A) or (B)).

27 The MSRB makes the information that dealers are required to disclose under Rule G-37(e) available to the public for inspection on the MSRB's Electronic Municipal Market Access (EMMA®) website.

28 17 CFR 240.15Ba1-1(e). See generally, 17 CFR 240.15Ba1-1 to 17 CFR 240.15Ba1-8 and related rules (collectively, "SEC Final Rule") (providing for the registration of municipal advisors); Release No. 34-70462 (September 20, 2013), 78 FR 67467, at 67469 (November 12, 2013) (File No. S7-45-10) ("Order Adopting SEC Final Rule").

29 See Rule G-37(g)(iv)(A).

30 Rule G-3(a)(i)(A)(2); see Rule G-37(g)(iv) (providing that MFP means, under paragraph (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 . . . subparagraph (A)").

services are also municipal advisory activities under Section 15B(e)(4) of the Exchange Act[31] and the SEC Final Rule. Moreover, currently, under Rule G-37, if a ban on municipal securities business is triggered, the ban encompasses the dealer's provision of those same financial advisory and consultant services. Current Rule G-37 applies equally to dealers that are also municipal advisors ("dealer-municipal advisors"). However, Rule G-37 does not currently apply in any respect to any municipal advisor that is not also a dealer (a "non-dealer municipal advisor.")

Proposed Amendments to Rule G-37

In summary, the proposed amendments to Rule G-37 would extend the core standards under Rule G-37 to municipal advisors by:

- subject to exceptions, prohibiting a municipal advisor from engaging in "municipal advisory business"[32] with a municipal entity for two years following the making of a contribution to certain officials of the municipal entity by the municipal advisor, a "municipal advisor professional"[33] (or "MAP") of the municipal advisor, or a PAC controlled by the municipal advisor or an MAP (a "ban on municipal advisory business");

- prohibiting municipal advisors and MAPs from soliciting contributions, or coordinating contributions, to certain officials of a municipal entity with which the municipal advisor is engaging or seeking to engage in municipal advisory business;

- requiring a "nexus" between a contribution and the ability of the official to influence the awarding of business to the municipal advisor (or the dealer, municipal advisor or investment adviser clients of a defined "municipal advisor third-party solicitor");[34]

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31 See 15 U.S.C. 78o-4(e)(4).

32 The term "municipal advisory business" is defined in proposed Rule G-37(g)(ix) and discussed infra.

33 The proposed definition of "municipal advisor professional" closely parallels the definition of municipal finance professional in current Rule G-37(g)(iv) and proposed Rule G-37(g)(ii), and is discussed infra.

34 See discussion in "Municipal Advisor Third-Party Solicitors," infra. The new term "municipal advisor third-party solicitor" is defined in proposed Rule G-37(g)(x).

- prohibiting municipal advisors and certain MAPs from soliciting payments, or coordinating payments, to political parties of states and localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business;

- prohibiting municipal advisors and MAPs from committing indirect violations of proposed amended Rule G-37;

- requiring quarterly disclosures to the MSRB of certain contributions and related information;

- providing for certain exemptions from a ban on municipal advisory business; and

- extending applicable interpretive guidance under Rule G-37 to municipal advisors.

In addition, subject to exceptions, the proposed amendments would prohibit a dealer or municipal advisor from engaging in municipal securities business or municipal advisory business, as applicable, with a municipal entity for two years following the making of a contribution to certain officials of the municipal entity by a municipal advisor third-party solicitor engaged by the dealer or municipal advisor, an MAP of such municipal advisor third-party solicitor, or a PAC controlled by the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor. The proposed amendments would also subject a dealer-municipal advisor to a "cross-ban" on municipal securities business, municipal advisory business, or both municipal securities business and municipal advisory business, consistent with the type of business the award of which can be influenced by the official to whom the contribution was made.

The discussion of the proposed rule change begins with the proposed amendments to expand the purpose and scope of Rule G-37 as set forth in proposed section (a). This is followed by a discussion of the defined terms "municipal advisor third-party solicitor," "municipal financial professional" and "municipal advisor professional"[35] as an understanding of these defined terms and the treatment under the proposed rule change of persons that fall within these definitions is fundamental to understanding the scope and operation of the subsequent sections of proposed amended Rule G-37. Thereafter, the proposed amendments are discussed in order of the sections of the rule, beginning with a discussion of the proposed amendments to section (b), regarding bans on business.

Purpose Section

Currently, Rule G-37(a) describes the purpose and intent of Rule G-37, which

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35 See discussion in "Municipal Finance Professionals and Municipal Advisor Professionals," infra. The new term "municipal advisor professional" is defined in proposed Rule G-37(g)(iii).

includes the protection of investors and the public interest. It further describes the key mechanisms through which the rule aims to achieve its purposes: (i) a ban on municipal securities business following the making of a triggering contribution to an official of an issuer; and (ii) the public disclosure of information regarding dealers' political contributions and municipal securities business.

The proposed amendments would modify section (a) to include reference to municipal advisory business and reflect that a ban on business and the public disclosure requirements would apply to both dealers and municipal advisors. The proposed amendments also would expand the scope of the purpose to ensure that the high standards and integrity of the "municipal securities market" (instead of the "municipal securities industry") are maintained. In addition, in section (a) and throughout the rule, the proposed defined term "municipal entity"[36] would be used in lieu of the term "issuer," and, the term "dealer" would be defined to include collectively, for purposes of the rule,

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[36] In proposed Rule G-37(g)(xi), "municipal entity" would have the meaning specified in Section 15B(e)(8) of the Act (15 U.S.C. 78o-4(e)(8)), and the rules and regulations thereunder. The proposed rule change would use this term in lieu of the more narrowly defined term "issuer" in light of the Dodd-Frank Act's grant of authority to the MSRB to adopt rules with respect to municipal advisors and municipal advisory activities for the protection of municipal entities. See supra nn. 3-7 and accompanying text.

Exchange Act Rule 15Ba1-1(g) (17 CFR 240.15Ba1-1(g)) defines "municipal entity" to mean

> any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (1) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) Any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (3) Any other issuer of municipal securities.

"Municipal entity" includes college savings plans ("529 plans") that comply with Section 529 of the Internal Revenue Code (26 U.S.C. 529), and certain entities that do not issue municipal securities, including various types of state or local government-sponsored or established plans or pools of assets, such as local government investment pools ("LGIPs"), public employee retirement systems, public employee benefit plans and public pension plans (including participant directed plans and 403(b) and 457 plans). See SEC Order Adopting Final Rule, at n. 191 (defining "public employee retirement system," "public employee benefit plan," "403(b) plan" and "457 plan"); id., at 78 FR at 67480-83 (discussing these terms).

brokers, dealers and municipal securities dealers. With these proposed amendments to section (a), the proposed rule change makes clear that proposed amended Rule G-37 is intended to apply to all dealers and all municipal advisors (collectively "regulated entities").

The proposed amendments to section (a) also would add "municipal entities" and "obligated persons"[37] as parties that the rule would be intended to protect, which reflects the scope of the MSRB's broadened statutory charge under the Dodd-Frank Act.[38] Although, by definition, obligated persons are not in that capacity issuers of municipal securities, at times officials who are the recipients of contributions may have influence in the selection of a dealer, municipal advisor or investment adviser in a matter in which an obligated person has financial obligations.

Municipal Advisor Third-Party Solicitors

Municipal advisors that undertake a solicitation of a municipal entity on behalf of a third-party dealer, municipal advisor or investment adviser engage in a distinct type of municipal advisory business. To extend the policies contained in Rule G-37 to these municipal advisors, the proposed amendments to Rule G-37 would add a new defined term, "municipal advisor third-party solicitor" in proposed Rule G-37(g)(x). A municipal advisor third-party solicitor would be defined in proposed Rule G-37(g)(x) as a municipal advisor that:

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

The terms "solicit" and "soliciting"[39] would be defined in proposed Rule G-37(g)(xix) to

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37 "Obligated person" is defined in Section 15B(e)(10) of the Exchange Act (15 U.S.C. 78o-4(e)(10)) and rules promulgated thereunder. See Exchange Act Rule 15Ba1-1(k) (17 CFR 240.15Ba1-1(k)).

38 See, e.g., 15 U.S.C. 78o-4(b)(2)(C).

39 The proposed definitions of "solicit" and "soliciting" would be consistent with the term "solicitation of a municipal entity or obligated person" as defined in Section 15B(e)(9) of the Exchange Act (15 U.S.C. 78o-4(e)(9)) and the rules and regulations thereunder. See, e.g., 17 CFR 240.15Ba1-1(n). In addition, the MSRB proposes to move the definition of "solicit" from current Rule G-37(g)(ix) to proposed Rule G-37(g)(xix).

mean, except for purposes of Rule G-37(c):

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

The terms "municipal advisor third-party solicitor," "solicit" and "soliciting" would be consistent with the terms "municipal advisor"[40] and "solicitation of a municipal entity or obligated person"[41] as defined in the Exchange Act and the rules and regulations thereunder.[42] Under the Exchange Act and the SEC Final Rule, the terms "municipal advisor" and "solicitation of a municipal entity or obligated person" are to be broadly construed, and are reflective of a legislative determination that municipal advisors that act as solicitors on behalf of third-party dealers, municipals advisors or investment advisers should be regulated as such without regard to the extent to which they undertake such solicitations.[43] This includes regulation with regards to "pay to play" practices.[44] Indeed, Congress determined to grant rulemaking authority over municipal advisors to

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40 See Section 15B(e)(4) of the Exchange Act (15 U.S.C. 78o-4(e)(4)).

41 See Section 15B(e)(9) of the Exchange Act (15 U.S.C. 78o-4(e)(9)).

42 See Exchange Act Rules 15Ba1-1(d), (e) and (n) (17 CFR 240.15Ba1-1(d), (e) and (n)) (defining the terms "municipal advisor," "municipal advisory activities" and "solicitation of a municipal entity or obligated person," respectively).

43 See Order Adopting SEC Final Rule, 78 at 67477 (noting that "the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors" and that the definition includes "solicitors" that engage in municipal advisory activities). See also id. at n. 411 and accompanying text ("As discussed in the Proposal, a solicitation of a single investment of any amount from a municipal entity would require the person soliciting the municipal entity to register as a municipal advisor.").

44 As the Commission has recognized, the regulation of municipal advisors and their advisory activities is generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, 78 FR at 67469.

the MSRB, in part, because it already "has an existing, comprehensive set of rules on key issues such as pay-to-play.…"[45]

Thus, a municipal advisor that provides advice to or on behalf of a municipal entity or obligated person within the meaning of Section 15B(e)(4) of the Exchange Act[46] and the rules and regulations thereunder may, depending on its other conduct, also be a municipal advisor third-party solicitor within the meaning of proposed Rule G-37(g)(x). Additionally, a municipal advisor may at one point in time also be a municipal advisor third-party solicitor and at another point in time may no longer fall within the proposed definition. For example, in one engagement, a municipal advisor's role may be limited to that of a municipal advisor third-party solicitor and the municipal advisor would solicit a municipal entity on behalf of a third-party dealer, municipal advisor or investment adviser. Contemporaneously, in a second engagement, the municipal advisor may be engaged to provide advice to a municipal entity regarding the issuance of municipal securities. Because, under the above example, the municipal advisor falls within the scope of the municipal advisor third-party solicitor definition in connection with at least one solicitation, engagement to solicit or attempt to seek an engagement to solicit, for purposes of the proposed rule change, the municipal advisor would fall within the definition of a municipal advisor third-party solicitor. Under the proposed rule change, the engagement of a municipal advisor third-party solicitor would have special implications for a dealer or municipal advisor (either a dealer or municipal advisor, a "regulated entity") that engages a municipal advisor third-party solicitor ("dealer client" or "municipal advisor client," respectively) to solicit a municipal entity on its behalf.[47]

Municipal Finance Professionals and Municipal Advisor Professionals

Under current Rule G-37, a contribution by a person who is a municipal finance professional, or MFP, of a dealer may trigger a ban on municipal securities business as to the dealer in certain cases. The proposed amendments would incorporate minor non-substantive amendments to the term MFP, and define as a "municipal advisor professional," or MAP, certain persons who are employed or otherwise affiliated with a municipal advisor. Similarly to an MFP, if an MAP makes a contribution, under the proposed amendments the action may trigger a ban on municipal advisory business as to the municipal advisor in certain cases.

Municipal Finance Professional. An associated person of a dealer is a "municipal finance professional" if he or she engages in the functions described in paragraphs (A)

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45 S. Report 111-176, at 149 (2010) ("Senate Report").

46 15 U.S.C. 78o-4(e)(4).

47 Hereinafter, a "dealer client" or a "municipal advisor client" may also be referred to as a "regulated entity client."

through (E) of current Rule G-37(g)(iv). In addition, if designated by a dealer as an MFP in the dealer's records, an associated person is deemed an MFP and retains the designation for one year after the last activity or position that gave rise to the designation.[48]

The MSRB proposes to more specifically identify the persons engaged in the functions described in current paragraphs (A) through (E) of Rule G-37(g)(iv), and to relocate the defined term, municipal finance professional, from subsection (g)(iv) to proposed subsection (g)(ii) of the rule. A person described in current Rule G-37(g)(iv)(A) would be a "municipal finance representative" in proposed Rule G-37(g)(ii)(A); a person described in current Rule G-37(g)(iv)(B) would be a "dealer solicitor" in proposed Rule G-37(g)(ii)(B); a person described in current Rule G-37(g)(iv)(C) would be a "municipal finance principal" in proposed Rule G-37(g)(ii)(C); a person described in current Rule G-37(g)(iv)(D) would be a "dealer supervisory chain person" in proposed Rule G-37(g)(ii)(D); and a person described in current Rule G-37(g)(iv)(E) would be a "dealer executive officer" in proposed Rule G-37(g)(ii)(E). Additionally, proposed Rule G-37(g)(ii)(B), describing "dealer solicitors" (i.e., associated persons of dealers who solicit municipal securities business), would describe this category of MFP by cross-referencing an additional proposed defined term, "municipal solicitor,"[49] and would delete as superfluous the parenthetical reference to Rule G-38, on solicitation of municipal securities business. The proposed rule change would use the proposed descriptive defined terms, in both the definition of "municipal finance professional" and throughout the rule text.

The MSRB also proposes additional minor technical amendments to the definition of MFP to improve its readability. In paragraph (A), defining the term, "municipal

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48 See Rule G-8(a)(xvi) (Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37).

49 In proposed Rule G-37(g)(xiii), "municipal solicitor," would mean:

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

finance representative," the MSRB proposes to substitute the words "other than" in place of the more lengthy proviso in the current definition. In paragraph (E), defining the term "dealer executive officer," the MSRB proposes to: (i) relocate the parenthetical pertaining to bank dealers within the definition; and (ii) reorganize the clause that provides that a dealer shall be deemed to have no MFPs if the only associated persons meeting the MFP definition are those described in paragraph (E) (of current Rule G-37(g)(iv) or proposed Rule G-37(g)(ii)). Also, the MSRB proposes minor, non-substantive amendments to shorten the final paragraph of the definition of municipal finance professional, which provides that a person designated by the dealer as an MFP in the dealer's records under Rule G-8(a)(xvi) would be deemed to be an MFP and would retain the designation for one year after the last activity or position which gave rise to the designation. The amendments to the defined term are not intended to, and would not be interpreted to, substantively modify the scope of the current definition of municipal finance professional, except to the extent the defined term "municipal solicitor" used within the "dealer solicitor" definition applies to the solicitation of a "municipal entity," rather than an "issuer."

Municipal Advisor Professionals. The associated persons of a municipal advisor that would be subject to the rule would be defined as "municipal advisor professionals" in proposed Rule G-37(g)(iii). "Municipal advisor professional" would be analogous to the amended defined term, "municipal finance professional." As in the definition of "municipal finance professional," proposed Rule G-37(g)(iii) identifies five types of MAPs, in proposed paragraphs (A) through (E), respectively, as: "municipal advisor representative," "municipal advisor solicitor," "municipal advisor principal," "municipal advisor supervisory chain person," and "municipal advisor executive officer."

Under proposed Rule G-37(g)(iii), an MAP would be any associated person of a municipal advisor engaged in the following activities:

> (A) any "municipal advisor representative" – any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);[50]
>
> (B) any "municipal advisor solicitor" – any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);
>
> (C) any "municipal advisor principal" – any associated person

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[50] Rule G-3(d)(i)(A), defines a "municipal advisor representative" as "a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions."

> who is both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i));[51] and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);
>
> (D) any "municipal advisor supervisory chain person" – any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, as required by 17 CFR 240.15Ba1-1(d)(4)(i); or
>
> (E) any "municipal advisor executive officer" – any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

As in the definition of MFP, proposed Rule G-37(g)(iii) defining MAP would provide that a person designated by a municipal advisor as an MAP in the municipal advisor's records would be deemed an MAP and would retain the designation for one

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[51] Rule G-3(e)(i) defines the term "municipal advisor principal" to mean

> a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

See Order Approving MA Qualification Requirements. The term "municipal advisory activities" (which is used within the "municipal advisor principal" definition) is defined in Rule D-13 to mean, except as otherwise specifically provided by rule of the Board, "the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder."

year after the last activity or position which gave rise to the designation.

The chart below illustrates the similarities between the defined term, "municipal finance professional," as revised by the proposed amendments, and the new proposed defined term, "municipal advisor professional."

Types of Municipal Finance Professional	Types of Municipal Advisor Professional
"municipal finance representative"	"municipal advisor representative"
"dealer solicitor"	"municipal advisor solicitor"
"municipal finance principal"	"municipal advisor principal"
"dealer supervisory chain person"	"municipal advisor supervisory chain person"
"dealer executive officer"	"municipal advisor executive officer"

Ban on Business

Currently, Rule G-37(b) sets forth a ban on municipal securities business that might have otherwise been awarded as a quid pro quo for a contribution, or at least as to which the appearance of a quid pro quo might have arisen. It prohibits a dealer from engaging in municipal securities business with an issuer within two years after a triggering contribution is made to an issuer official by the dealer, an MFP of the dealer or a PAC controlled by either the dealer or an MFP of the dealer. Proposed Rule G-37(b)(i)(A) would retain this ban on municipal securities business for dealers. Proposed Rule G-37(b)(i)(B) would create an analogous two-year ban on municipal advisory business applicable to municipal advisors that are not, at the time of the triggering contribution, municipal advisor third-party solicitors. Proposed Rule G-37(b)(i)(C)(1) would create, for municipal advisor third-party solicitors, a two-year ban on municipal advisory business analogous to the ban in proposed Rule G-37(b)(i)(B).

Under the proposed amendments, as discussed infra,[52] whether a contribution would trigger a ban on municipal securities business, a ban on municipal advisory business, or a ban on both types of business (any such ban, a "ban on applicable business") for a dealer, municipal advisor or dealer-municipal advisor generally would depend on the identity of the person who made the contribution, the type of influence that can be exercised by the official to whom the contribution was made and whether an exclusion from the ban would apply.

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52 See discussion in "Persons from Whom Contributions Could Trigger a Ban on Business," "Official of a Municipal Entity," "Ban on Business for Dealers; Ban on Business for Municipal Advisors," "Ban on Business for Dealer-Municipal Advisors" and "Excluded Contributions," infra.

Persons from Whom Contributions Could Trigger a Ban on Business

Dealers. Under current Rule G-37(b)(i), contributions by three types of contributors — a dealer,[53] an MFP of the dealer[54] or a PAC controlled by either the dealer or an MFP of the dealer[55]— may trigger a ban on municipal securities business for the dealer. The proposed amendments to Rule G-37 would provide that this same set of persons may trigger a ban on business for the dealer, and would renumber this provision as proposed subsection (b)(i)(A).

Municipal Advisors that are not Municipal Advisor Third-Party Solicitors. Proposed Rule G-37(b)(i)(B) would set forth, for municipal advisors that are not municipal advisor third-party solicitors at the time of a contribution, a provision that parallels proposed Rule G-37(b)(i)(A) for dealers. Under proposed Rule G-37(b)(i)(B), contributions by three types of contributors — a municipal advisor, an MAP of the municipal advisor or a PAC controlled by either the municipal advisor or an MAP of the municipal advisor — may trigger a ban on municipal advisory business for the municipal advisor.

Municipal Advisor Third-Party Solicitors. Proposed Rule G-37(b)(i)(C)(1) would set forth, for municipal advisor third-party solicitors, a provision that parallels proposed Rule G-37(b)(i)(A) for dealers and proposed Rule G-37(b)(i)(B) for municipal advisors that are not municipal advisor third-party solicitors. Under proposed Rule G-37(b)(i)(C)(1), contributions by three types of contributors — the municipal advisor third-party solicitor, an MAP of the municipal advisor third-party solicitor or a PAC controlled by either the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor — may trigger a ban on municipal advisory business for the municipal advisor third-party solicitor.

Clients of a Municipal Advisor Third-Party Solicitor that are Dealers or Municipal Advisors. Under proposed Rule G-37(b)(i)(C)(2), the engagement of a municipal advisor third-party solicitor would have special implications for a dealer client or municipal advisor client. If a dealer or municipal advisor engages a municipal advisor third-party solicitor to solicit a municipal entity on its behalf, three additional types of contributors may trigger a ban on municipal securities business as to a dealer client, or a ban on municipal advisory business as to a municipal advisor client. Clause (b)(i)(C)(2)(a) would apply to dealer clients of a municipal advisor third-party solicitor[56]

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53 See Rule G-37(b)(i)(A).

54 See Rule G-37(b)(i)(B).

55 See Rule G-37(b)(i)(C).

56 Currently, a dealer is generally prohibited under Rule G-38 from making payments to a third-party solicitor to solicit municipal securities business on

and clause (b)(i)(C)(2)(b) would apply to municipal advisor clients (including municipal advisor third-party solicitor clients) of a municipal advisor third-party solicitor.[57] Under each of the proposed provisions, the additional types of contributors that may trigger a ban for the regulated entity are the same. They are: the engaged municipal advisor third-party solicitor; an MAP of the engaged municipal advisor third-party solicitor; and a PAC controlled by either the engaged municipal advisor third-party solicitor or an MAP of the engaged municipal advisor third-party solicitor. The MSRB believes the risk of actual or apparent quid pro quo corruption is obvious and substantial when a municipal advisor third-party solicitor who is engaged to solicit a municipal entity for business on behalf of a regulated entity client makes a triggering contribution to an official of that municipal entity with the ability to influence the awarding of business to the municipal advisor third-party solicitor's client. For such instances, clauses (b)(i)(C)(2)(a) and (b) are designed to curb actual and apparent quid pro quo corruption involving the regulated entity client and the official to whom the contribution is made and to prevent such a regulated entity client from obtaining the benefit of any actual quid pro quo corruption.

The determination of whether a municipal advisor was engaged as a municipal advisor third-party solicitor by a regulated entity client would be determined based on the facts and circumstances.[58] The MSRB would not consider the absence of a writing

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behalf of the dealer. However, proposed Rule G-37(b)(i)(C)(2)(a) would apply in the limited cases where payments to a third-party solicitor are permitted under Rule G-38 as well as in cases where a dealer engaged a municipal advisor third-party solicitor in violation of Rule G-38.

57 Although municipal advisors that are not dealers are not subject to Rule G-38, municipal advisors that are not municipal advisor third-party solicitors would be subject to proposed Rule G-42, if approved by the Commission. In relevant part, proposed Rule G-42 provides that non-solicitor municipal advisors are prohibited from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities subject to limited exceptions, which include reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities. See Proposed Rule G-42 Filing.

58 For example, if the facts and circumstances suggest that On-Site MA, a municipal advisor third-party solicitor, and Best Dealer, a dealer, orally agreed that On-Site MA would solicit Municipal Entity to retain Best Dealer to underwrite municipal securities for Municipal Entity, On-Site MA would be deemed to have been engaged as a municipal advisor third-party solicitor on behalf of Best Dealer with respect to Municipal Entity, even in the absence of a written engagement letter. Similarly, if there was a written engagement letter between On-Site MA and Best

evidencing the relationship, or the absence of particular terms in a writing evidencing the relationship, to preclude a finding that a municipal advisor third-party solicitor was engaged by a regulated entity to solicit a municipal entity on its behalf within the meaning of proposed Rule G-37(b)(i).[59]

Investment Adviser Clients of a Municipal Advisor Third-Party Solicitor. Because Rule G-37 does not apply to investment advisers in their capacity as such, if an investment adviser engages a municipal advisor third-party solicitor to solicit on its behalf for an engagement to provide investment advisory services, the actions of the municipal advisor third-party solicitor would not trigger a ban on business for the investment adviser.[60]

Official of a Municipal Entity

Under current Rule G-37, for any contribution to trigger a ban on applicable business, an additional element -- selection influence -- must be present. A contribution

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Dealer that was limited to soliciting municipal securities business in a major metropolitan city located in a tri-state area, but the facts and circumstances show that Best Dealer actually agreed to engage On-Site MA to solicit municipal securities business from any and all municipal entities in the metropolitan tri-state area, On-Site MA would be deemed to have been engaged as a municipal advisor third-party solicitor on behalf of Best Dealer with respect to the entire metropolitan tri-state area.

[59] But see discussion in "Persons from Whom Contributions Could Trigger a Ban on Business – Municipal Advisor Third-Party Solicitors," supra, and "Municipal Securities Business and Municipal Advisory Business," infra. Under proposed Rule G-37(b)(i)(C)(1), to impose a ban on municipal advisory business for a municipal advisor third-party solicitor, the municipal advisor third-party solicitor does not need to be specifically engaged, at the time of the contribution, to solicit the type of work over which the official to whom the contribution is made has selection influence. Because a municipal advisor third-party solicitor, by definition, may solicit for several different types of business (i.e., municipal securities business, municipal advisory business and investment advisory services), a contribution to any official with the ability to influence the awarding of business to the solicitor's current or prospective dealer, municipal advisor or investment adviser clients could trigger a ban for the municipal advisor third-party solicitor since there is at least an appearance of quid pro quo corruption when it makes a contribution to such an official. See infra, n. 62.

[60] However, investment advisers are subject to the requirements and prohibitions provided in the IA Pay to Play Rule. 17 CFR 275.206(4)-5; see generally, Order Adopting IA Pay to Play Rule.

by a dealer, MFP or PAC controlled by either the dealer or an MFP of the dealer can only trigger a ban on municipal securities business for the dealer if the official to whom the contribution was made is an "official of an issuer." As discussed infra, an "official of an issuer" must, in relevant part, have the ability to influence "the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer."[61] Proposed amended Rule G-37 would, as explained below, extend this selection influence element to municipal advisors (and the dealer, municipal advisor and investment adviser clients of municipal advisor third-party solicitors), requiring a nexus between the influence that can be exercised by the "official of a municipal entity" ("ME official") who receives a potentially ban-triggering contribution and the type of business in which the regulated entity is engaged or is seeking to engage.[62]

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61 See Rule G-37(g)(vi).

62 Dealers and municipal advisors that are not municipal advisor third-party solicitors are typically compensated by the municipal entity or obligated person to whom they are providing advice or municipal securities business. Thus, when a quid pro quo contribution is made by a dealer or such a municipal advisor, the quid is the contribution and the quo is the awarding of business to the dealer or municipal advisor in exchange for the contribution. However, municipal advisor third-party solicitors (in their capacity as such) are typically compensated not by the municipal entity or obligated person they solicit, but by a third-party dealer, municipal advisor or investment adviser for whom they are attempting to secure municipal securities business, municipal advisory business or engagements to provide investment advisory services. When a quid pro quo contribution is made by a municipal advisor third-party solicitor, the quid is the contribution and the quo is typically the awarding of business to the current or prospective clients of the municipal advisor third-party solicitor. Of course, the quo for a municipal advisor third-party solicitor (a type of municipal advisor) could also be the awarding of municipal advisory business to the municipal advisor itself, as a municipal advisor third-party solicitor may simultaneously undertake a solicitation of a municipal entity or obligated person and provide, or seek to provide, to another municipal entity or obligated person certain advice. Thus, for municipal advisor third-party solicitors, the appearance of quid pro quo corruption may arise with respect to a wider range of contributions, as compared to dealers and municipal advisors that are not municipal advisor third-party solicitors. Because municipal advisor third-party solicitors are in the business of attempting to secure business for third-party dealers, municipal advisors and investment advisers, the fact that a municipal advisor third-party solicitor is not, at the time of a contribution, actually engaged to solicit a municipal entity for a particular type of business does not avoid the appearance of quid pro quo corruption. As discussed supra, a municipal advisor third-party solicitor is a municipal advisor that, in relevant part, is currently soliciting, is engaged to solicit, or is seeking to be engaged to solicit a municipal entity for business on behalf of a third-party dealer, municipal advisor or investment adviser. Thus, a municipal advisor third-

The term "official of a municipal entity" would be substituted for the current term "official of an issuer" in Rule G-37. The definition of "official of an issuer" (or "official of such issuer") in current Rule G-37(g)(vi) includes any person who, at the time of the contribution, was 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 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 dealer for municipal securities business by an issuer.

The proposed amendments would delete the term "official of an issuer" from Rule G-37(g)(vi) and substitute the term "official of a municipal entity" as set forth in proposed Rule G-37(g)(xvi). To take into account the possibility that an ME official may have the ability to influence the hiring of a dealer, municipal advisor or investment adviser, or the hiring of two or more of such professionals, three categories of ME officials would be identified in proposed Rule G-37(g)(xvi): an official of a municipal entity with dealer selection influence, as described in proposed paragraph (A), an official of a municipal entity with municipal advisor selection influence, as described in proposed paragraph (B), and an official of a municipal entity with investment adviser selection influence, as described in proposed paragraph (C).

The term "official of a municipal entity with dealer selection influence" would be substantively similar to the "official of an issuer" definition in current Rule G-37(g)(vi), with the exception of the substitution of the term "municipal entity" in place of the term "issuer."[63] However, because the term "municipal entity" used in the "official of a municipal entity with dealer selection influence" definition includes entities beyond those defined as "issuers," the official of a municipal entity with dealer selection influence definition is more expansive than the "official of an issuer" definition it replaces.[64] The term "official of a municipal entity with municipal advisor selection influence" would be

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party solicitor will always stand to gain from a quid pro quo contribution as such a contribution may assist the municipal advisor third-party solicitor in obtaining new business from a prospective dealer, municipal advisor or investment adviser client seeking to curry favor with the ME official to whom the municipal advisor third-party solicitor made the contribution.

63 In addition, the proposed definition of "official of a municipal entity with dealer selection influence" would include minor technical amendments to the current definition of "official of an issuer" to improve its readability.

64 For example, the term "municipal entity" includes certain entities that do not issue municipal securities, including various types of state or local government-sponsored or established plans or pools of assets, such as LGIPs, public employee retirement systems, public employee benefit plans and public pension plans (including participant directed plans and 403(b) and 457 plans). See supra, n. 36.

analogous to the "official of a municipal entity with dealer selection influence" definition. In connection with municipal advisor third-party solicitors that solicit on behalf of an investment adviser, the term "official of a municipal entity with investment adviser selection influence" would be analogous to the "official of a municipal entity with dealer selection influence" definition for dealers (and municipal advisor third-party solicitors on behalf of a dealer) and the "official of a municipal entity with municipal advisor selection influence" definition for all municipal advisors. The proposed definition's structure, which includes the three categories of ME officials, provides the flexibility to establish, in the case of a contribution to an ME official, whether there is the required nexus between the ME official who received the contribution (based upon his or her scope of influence) and the awarding of business that gives rise to a sufficient risk of quid pro quo corruption or the appearance of such corruption to warrant a two-year ban.

Municipal Securities Business and Municipal Advisory Business

Currently, under Rule G-37, a dealer subject to a ban is generally prohibited from engaging in "municipal securities business" with the relevant issuer. "Municipal securities business" is currently defined in Rule G-37(g)(vii) as the purchase of a primary offering on other than a competitive bid basis, the offer or sale of a primary offering of municipal securities, providing financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering on other than a competitive bid basis, and providing remarketing agent services with respect to a primary offering on other than a competitive bid basis. Under interpretive guidance issued in 1997 (the "1997 Guidance"), the municipal securities business from which a dealer subject to a ban is prohibited from engaging in is "new" municipal securities business. The MSRB has interpreted "new" municipal securities business as contractual obligations with an issuer entered into after the date of the triggering contribution to an official of the issuer and contractual obligations that were entered into prior to the date of the triggering contribution but which are not specific to a particular issue of a security.[65] The latter category that is subject to the ban is referred to as "pre-existing but non-issue specific contractual undertakings."[66] In contrast, pre-existing issue-specific contractual undertakings are generally not deemed "new" municipal securities business, and are not subject to the ban.[67] Interpretive guidance issued in 2002 (the "2002 Guidance") modified the 1997

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65 See 1997 Guidance.

66 See id. Pre-existing but non-issue-specific contractual undertakings are subject to the ban on municipal securities business, subject to an orderly transition to another entity that is not subject to a ban to perform such business. Id.

67 See id. For example, if a bond purchase agreement was signed prior to the date of a contribution triggering a ban on municipal securities business, a dealer may continue to perform its services as an underwriter on the issue. Significantly, however, new or different services provided under provisions in existing issue-specific contracts that allow for changes in the services provided by the dealer or

Guidance in a limited respect to expand the scope of municipal securities business that is not "new" for dealers that serve as primary distributors of municipal fund securities, in light of the unique aspects of municipal fund securities programs and the role that primary distributors play with respect to such programs.

Under the proposed rule change, the definition of municipal securities business would not be amended, except to renumber the definition as proposed subsection (g)(xii) and incorporate conforming changes. Additionally, the 1997 Guidance and the 2002 Guidance would remain unchanged for dealers.

Under proposed Rule G-37(b)(i)(B) and proposed Rule G-37(b)(i)(C)(1), a municipal advisor (including a municipal advisor third-party solicitor) subject to a ban would generally be prohibited from engaging in "municipal advisory business" with the relevant municipal entity. Proposed Rule G-37(g)(ix) would define "municipal advisory business" to mean those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder.[68]

Notably, if a municipal advisor third-party solicitor is subject to a ban under proposed Rule G-37(b)(i)(C), it would be prohibited from engaging in all types of municipal advisory business with the relevant municipal entity, including providing certain advice to the municipal entity and soliciting the municipal entity on behalf of any third-party dealer, municipal advisor or investment adviser.

For municipal advisors, the MSRB intends that all existing interpretive guidance regarding the municipal securities business of dealers under Rule G-37 would apply to the analogous interpretive issues regarding the municipal advisory business of municipal advisors. However, because the "new" versus non-"new" business distinction in the 1997 Guidance only applies to pre-existing issue-specific contractual obligations with an issuer, such guidance would not apply to municipal advisor third-party solicitors as their contractual obligations are not owed to an issuer but to third parties that are regulated entity clients or investment adviser clients. Further, the 2002 Guidance would not be extended to any municipal advisors to municipal fund securities programs because the 2002 Guidance addressed a non-analogous interpretive issue for dealers.[69] Multiple

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the compensation paid by the issuer are deemed new municipal securities business. Id. Thus, Rule G-37 precludes a dealer subject to a ban from performing such additional functions or receiving additional compensation.

[68] See proposed Rule G-37(g)(ix).

[69] Because the 1997 Guidance would not apply to municipal advisor third-party solicitors, the 2002 Guidance (which modifies the 1997 Guidance) would also have no application to municipal advisor third-party solicitors. Thus, municipal advisor third-party solicitors on behalf of third-party dealers, municipal advisors

factors supported the 2002 Guidance regarding primary distributors of municipal fund securities, but the essential factor was the magnitude of the possible repercussions to an issuer of municipal fund securities or investors in municipal fund securities resulting from a sudden change in the primary distributor. For example, issuers would typically not be faced with redesigning existing programs in light of the exit of a municipal advisor to such a plan. Further, the MSRB believes that the exit of a municipal advisor would typically have little or no direct impact on investors, and would not force investors to restructure or establish new relationships with different dealers in order to maintain their investments. The Board does not believe that the disruption of services provided by a municipal advisor to a municipal fund securities plan would result in repercussions of comparable scope or severity to issuers and investors.

Ban on Business for Dealers; Ban on Business for Municipal Advisors

Under the proposed rule change, a dealer or municipal advisor that is not a municipal advisor third-party solicitor could be subject to a ban on applicable business only when a triggering contribution is made to an ME official who can influence the awarding of the type of business in which that regulated entity engages.

A dealer that engages in municipal securities business, but not municipal advisory business, would be subject to a ban on municipal securities business only when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2) to an official of a municipal entity with dealer selection influence, as described in proposed Rule G-37(g)(xvi)(A). (Although the ME official may also have influence as described in proposed Rule G-37(g)(xvi)(B) and (C), regarding the selection of municipal advisors and investment advisers, the broader scope of influence would be irrelevant in determining whether a dealer would be subject to a ban on municipal securities business.)[70] Conversely, a contribution made by any of

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and investment advisers would be prohibited, based on a triggering contribution, from continuing to perform under any pre-existing contract to solicit the relevant municipal entity (whether an issuer of municipal fund securities or any other type of municipal entity).

70 The following example illustrates the impact of a triggering contribution made by an MAP of a municipal advisor third-party solicitor when the municipal advisor third-party solicitor was engaged by a dealer client as set forth in proposed Rule G-37(b)(i)(C)(2).

Best Dealer is a dealer located in a Midwestern state. On-Site MA is a municipal advisor third-party solicitor located in a western coastal state, State A. Best Dealer engages On-Site MA to solicit three major municipal entities in State A to hire Best Dealer to underwrite municipal bonds, including North City and South City of State A. Dan is an employee and an MAP of On-Site MA. Dan resides in North City. Dan makes a contribution of $240 to an ME official of South City, for

the persons described in proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2) to an ME official that does not have dealer selection influence (such as an official with only municipal advisor selection influence, or only municipal advisor and investment adviser selection influence) would not trigger a ban for the dealer.

Similarly, a non-dealer municipal advisor that is not a municipal advisor third-party solicitor would be subject to a ban on municipal advisory business only when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(B) or proposed Rule G-37(b)(i)(C)(2) to an ME official that is at least an official of a municipal entity with municipal advisor selection influence.[71]

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whom Dan is not entitled to vote. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers for South City matters. As a result of Dan's $240 contribution to the ME official, Best Dealer, the dealer client of On-Site MA, becomes subject to a ban on engaging in municipal securities business with South City, because Dan's contribution is a triggering contribution and Best Dealer engaged On-Site MA to solicit South City on behalf of Best Dealer. In addition, as discussed infra, On-Site MA would also become subject to a ban on engaging in municipal advisory business with South City.

Although the ME official exercises influence in the selection of municipal advisors and investment advisers, because Best Dealer does not engage in municipal advisory business, a ban on applicable business would subject Best Dealer only to a ban on municipal securities business.

[71] The following example illustrates the impact of a triggering contribution made by an MAP of a municipal advisor third-party solicitor when engaged by a municipal advisor client that is not a municipal advisor third-party solicitor as set forth in proposed Rule G-37(b)(i)(C)(2).

Best MA is a municipal advisor located in a Midwestern state, and is not a municipal advisor third-party solicitor. On-Site MA is a municipal advisor third-party solicitor located in a western coastal state, State A. Best MA engages On-Site MA to solicit the city school districts of three major municipalities in State A to hire Best MA to provide municipal advisory services for such school districts, including North City School District and South City School District. Dan is an employee and an MAP of On-Site MA. Dan resides in North City. Dan makes a contribution of $240 to an official running for re-election to the school board of South City School District. Dan is not entitled to vote for the candidate. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers for South City School District matters. As a result of Dan's $240 contribution to the ME official, Best MA, the client of On-Site MA, becomes subject to a ban on engaging in municipal advisory business with South City School District, because Dan's contribution is a triggering contribution and

A non-dealer municipal advisor third-party solicitor would be subject to a ban on municipal advisory business, including advising and soliciting, when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(C)(1) to any ME official,[72] if the ME official has municipal advisor selection influence, dealer

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Best MA engaged On-Site MA to solicit South City School District on behalf of Best MA. Because Best MA does not engage in municipal securities business, a ban on applicable business would subject Best MA only to a ban on municipal advisory business.

In addition, as discussed infra, On-Site MA would also become subject to a ban on engaging in municipal advisory business with South City.

72 The impact of a triggering contribution made by a municipal advisor third-party solicitor (or one of its MAPs, or a PAC controlled by the municipal advisor third-party solicitor or an MAP thereof) to an ME official is illustrated as follows:

Best Dealer is a dealer located in a Midwestern state. Best MA is a municipal advisor located in a Midwestern state, and is not a municipal advisor third-party solicitor. Best IA is an investment adviser located in the northeast. On-Site MA is a municipal advisor third-party solicitor located in a western coastal state, State A. Best Dealer engages On-Site MA to solicit three major municipal entities in State A, including North City and South City, to hire Best Dealer to underwrite municipal bonds. Best MA engages On-Site MA to solicit the five largest municipal entities in State A, including North City and South City, to hire Best MA to provide municipal advisory services for such entities. Best IA engages On-Site MA to solicit, in State A, all municipalities with populations over 150,000 people, to retain Best IA for investment advice. Dan is an employee and an MAP of On-Site MA, and resides in North City. Dan makes a contribution of $240 to an ME official of South City, for whom Dan is not entitled to vote. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers, for South City matters.

The consequences for On-Site MA would be as follows: On-Site MA would be banned from the following business with South City: engaging in any form of municipal advisory business with South City (because municipal advisory business is defined to include solicitation on behalf of dealers, municipal advisors and investment advisers AND other municipal advisory functions), including soliciting South City on behalf of any dealer, including Best Dealer, any third-party municipal advisor, including Best MA, and any investment adviser.

The additional consequences of such contribution would be as follows: the dealer client, Best Dealer, would become subject to a ban on engaging in municipal securities business with South City, because Best Dealer engaged On-Site MA to

selection influence or investment adviser selection influence.[73]

If a municipal advisor does not also engage in municipal securities business, a ban on applicable business under the proposed rule change would subject the municipal advisor only to a ban on municipal advisory business.

Ban on Business for Dealer-Municipal Advisors

The proposed rule change would treat dealer-municipal advisors as a single economic unit and would subject such firms to an appropriately scoped ban on business. The scope of the ban on business would not be dependent on the particular line of business within the dealer-municipal advisor with which the person or PAC that is the contributor may be associated. Instead, the scope of the ban on business would depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made. As a result, a dealer-municipal advisor could be subject, based on a single contribution, to a ban on municipal securities business, a ban on municipal advisory business, or both. Further, any of the following entities or persons might trigger a ban on business for a dealer-municipal advisor if the entity or person makes a contribution that is a triggering contribution in the particular facts and circumstances: the dealer-municipal advisor; an MFP or MAP of the dealer-municipal advisor; a PAC controlled by the dealer-municipal advisor or an MFP or an MAP of the dealer-municipal advisor; a municipal advisor third-party solicitor engaged on behalf of the dealer-municipal advisor; an MAP of such municipal advisor third-party solicitor; or a PAC

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solicit South City on behalf of Best Dealer (and the ME official receiving the contribution had dealer selection influence); and the municipal advisor client, Best MA, would become subject to a ban on engaging in municipal advisory business (of any type) with South City, because Best MA engaged On-Site MA to solicit South City on behalf of Best MA (and the ME official receiving the contribution had municipal advisor selection influence). However, Best IA, who also engaged On-Site MA to solicit South City (a municipality with a population of over 150,000 people), would not be subject to a ban under proposed amended Rule G-37, because although the ME official receiving the contribution had investment adviser selection influence, the proposed rule change does not extend to investment advisers that are not also dealers or municipal advisors. However, as noted supra, Best IA would be subject to the requirements and prohibitions provided in the IA Pay to Play Rule. See discussion in "Investment Adviser Clients of a Municipal Advisor Third-Party Solicitor" and n. 60, supra.

73 Additionally, a contribution made by any of the persons described in proposed Rule G-37(b)(i)(C)(2) to an official of a municipal entity with municipal advisor selection influence could also trigger a ban for the engaging municipal advisor third-party solicitor if the engaging municipal advisor third-party solicitor engaged another municipal advisor third-party solicitor under proposed Rule G-37(b)(i)(C)(2)(b).

controlled by either such municipal advisor third-party solicitor or an MAP of such municipal advisor third-party solicitor.

Ban on Applicable Business for Dealer-Municipal Advisors. A dealer-municipal advisor could be subject to a ban on municipal securities business, in its capacity as a dealer, under proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2)(a), under the same terms that apply to other dealers. Similarly, a dealer-municipal advisor that is not a municipal advisor third-party solicitor could, under proposed Rule G-37(b)(i)(B) or proposed Rule G-37(b)(i)(C)(2)(b), be subject to a ban on municipal advisory business under the same terms that apply to non-dealer municipal advisors that are not municipal advisor third-party solicitors. In addition, if a dealer-municipal advisor is a municipal advisor third-party solicitor, under proposed Rule G-37(b)(i)(C), the dealer-municipal advisor could be subject to a ban on municipal advisory business under the same terms that apply to other municipal advisor third-party solicitors.

Cross-Ban. In addition to paragraphs (b)(i)(A), (b)(i)(B) and (b)(i)(C) potentially having application to dealer-municipal advisors, proposed Rule G-37(b)(i)(D) would provide for the imposition of a "cross-ban" for dealer-municipal advisors to address quid pro quo corruption, or the appearance thereof, in two scenarios that arise only for dealer-municipal advisors. The proposed cross-ban would be a ban on business applicable to a line of business within a dealer-municipal advisor as a result of a triggering contribution that emanated from a person or entity associated with the other line of business within the same dealer-municipal advisor. With the provision for a cross-ban, the scope of a ban on business for a dealer-municipal advisor would not be dependent on the particular line of business within the dealer-municipal advisor with which the person or PAC that is the contributor may be associated. Instead, the scope of the ban on business will depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made.

In the first scenario, a contribution is made to an ME official with both dealer and municipal advisor selection influence by a person or entity associated with only one line of business within the dealer-municipal advisor. For example, assume an MFP of the dealer-municipal advisor who is not also an MAP makes a triggering contribution to an ME official with both dealer and municipal advisor selection influence. Proposed paragraph (b)(i)(D) would subject the dealer-municipal advisor to a ban not only on municipal securities business but also to a cross-ban on municipal advisory business because the contribution is to an ME official who can exercise influence as to the selection of the dealer-municipal advisor in both a dealer and municipal advisor capacity.

In the second scenario, a contribution is made to an ME official with only one type of influence (either dealer selection influence or municipal advisor selection influence, but not both) from a person or entity associated only with the line of business as to which the ME official does not have influence. For example, assume a triggering contribution is made to an official of a municipal entity with only dealer selection influence by an MAP of the dealer-municipal advisor who is not also an MFP. Proposed paragraph (b)(i)(D) would subject the dealer-municipal advisor to a cross-ban on

municipal securities business, but not to a ban on municipal advisory business because the ME official is not an official with municipal advisor selection influence.[74] Similarly, if a triggering contribution were made to an official of a municipal entity with only municipal advisor selection influence by an MFP of the dealer-municipal advisor who is not an MAP, the dealer-municipal advisor would be subject to only a ban on municipal advisory business.

The table below shows the most common persons from whom a contribution could trigger a ban on municipal securities business, a ban on municipal advisory business, or both under proposed amended Rule G-37.

<table>
<tr><th colspan="6">Persons From Whom a Contribution Could Trigger a Ban on Municipal Securities Business, Municipal Advisory Business, or Both[75]</th></tr>
<tr><th>Regulated Entity Subject to a Ban</th><th>I. Dealer</th><th>II. Municipal Advisor That Is Not a Municipal Advisor Third-Party Solicitor</th><th>III. Municipal Advisor Third-Party Solicitor (for purposes of this table, “MATP solicitor”)</th><th colspan="2">IV. Dealer-Municipal Advisor (for purposes of this table, “the firm”)</th></tr>
<tr><td rowspan="7">Contributor</td><td>the dealer</td><td>the municipal advisor</td><td>the MATP solicitor</td><td colspan="2">the firm</td></tr>
<tr><td>an MFP of the dealer</td><td>an MAP of the municipal advisor</td><td>an MAP of the MATP solicitor</td><td>an MFP of the firm</td><td>an MAP of the firm</td></tr>
<tr><td>a PAC controlled by the dealer</td><td>a PAC controlled by the municipal advisor</td><td>a PAC controlled by the MATP solicitor</td><td colspan="2">a PAC controlled by the firm</td></tr>
<tr><td>a PAC controlled by an MFP of the dealer</td><td>a PAC controlled by an MAP of the municipal advisor</td><td>a PAC controlled by an MAP of the MATP solicitor</td><td>a PAC controlled by an MFP of the firm</td><td>a PAC controlled by an MAP of the firm</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>If an MATP solicitor is engaged to solicit a municipal entity on behalf of the dealer, the entities and persons in column III</td><td>If an MATP solicitor is engaged to solicit a municipal entity on behalf of the municipal advisor, the entities and persons in column III</td><td>If an MATP solicitor is engaged to solicit a municipal entity on behalf of the MATP solicitor, the entities and persons in this column above</td><td colspan="2">If an MATP solicitor is engaged to solicit a municipal entity on behalf of the firm, the entities and persons in column III</td></tr>
</table>

74 Consistently, if a contribution is made by an MAP of a dealer-municipal advisor that is also a municipal advisor third-party solicitor to an ME official with only investment adviser selection influence, the dealer-municipal advisor would be subject to a ban on municipal advisory business, but it would not be subject to a cross-ban on municipal securities business.

75 This table is for illustrative purposes only. Reference should be made to the proposed amended rule text for complete details.

Orderly Transition Period

As discussed above, under the 1997 Guidance, a dealer that is subject to a ban on municipal securities business with an issuer is prohibited from engaging in new municipal securities business with that issuer, which includes pre-existing but non-issue-specific contractual undertakings. In such cases, to give the issuer the opportunity to receive the benefit of the work already provided and to find a replacement to complete the work performed by the dealer, as needed, the dealer may—notwithstanding the ban on business—continue to perform its pre-existing but non-issue-specific contractual undertakings subject to an orderly transition to another entity to perform such business.[76] The interpretive guidance provides that this transition period should be as short a period of time as possible.[77]

Proposed Rule G-37(b)(i)(E) would essentially codify this guidance for dealers and extend it to municipal advisors that are not soliciting the municipal entity with which they become subject to a ban on applicable business. Under this provision, a dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a municipal entity and, during the period of the engagement, becomes subject to a ban on applicable business, may continue to engage in the otherwise prohibited municipal securities business and/or municipal advisory business solely to allow for an orderly transition to another entity and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to its client. This provision, however, would not permit a municipal advisor third-party solicitor to continue soliciting a municipal entity with which it becomes prohibited from engaging in municipal advisory business.[78] Consistent with the 1997 Guidance, the proposed rule change would specifically provide that the transition period must be as short a period of time as possible. In addition, in the event that a dealer or municipal advisor avails itself of the orderly transition period, proposed Rule G-37(b)(i)(E) would extend the ban on business with the municipal entity for which the dealer or municipal advisor utilized the orderly transition period by the duration of the orderly transition period.

For municipal advisors, consistent with the existing interpretive guidance applicable to dealers, the orderly transition period would apply only with respect to pre-existing but non-issue-specific contractual undertakings owed to municipal entities, which, as discussed above, are included in "new" municipal advisory business and are

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76 See 1997 Guidance.

77 Id.

78 Because any relevant contractual obligations of a municipal advisor third-party solicitor in its capacity as such are owed not to a municipal entity but to third-party regulated entities or investment advisers, the rationale for the orderly transition period would not apply.

subject to a ban. For example, if a municipal advisor enters into a long-term contract with a municipal entity for municipal advisory business (e.g., a five-year agreement in which the municipal advisor agrees to provide to the municipal entity advice on a range of matters, including with respect to its reserve policy and the issuance of municipal securities) and a contribution that results in a ban on municipal advisory business is given after such a non-issue-specific contract is entered into, the municipal advisor would be permitted to continue to perform under the contract for as short a period of time as possible to allow for an orderly transition to another municipal advisor. Also, in this example, the ban on municipal advisory business with the municipal entity would be extended by the length of the orderly transition period.

After carefully considering whether to extend the orderly transition period under the interpretive guidance to municipal advisors, the MSRB determined that it is a necessary and appropriate aspect of the regulatory framework governing the municipal market. Significantly, the MSRB believes that certain aspects of proposed amended Rule G-37 would serve as important bulwarks against potential abuse of the orderly transition period. Public disclosure is a critical aspect of Rule G-37 and under the proposed rule change, municipal advisors would be required to disclose (comparable to the current requirements for dealers) to the MSRB information about their political contributions and the municipal advisory business in which they have engaged.[79] The MSRB then would make such disclosures available to the public as well as fellow regulators charged with examining for compliance with and enforcing Rule G-37. In addition, under proposed Rule G-37(d), municipal advisors and their MAPs would (comparable to the current requirements for dealers) be prohibited from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of a ban on business. This anti-circumvention provision, together with the required disclosures, would act to deter and promote detection of potential abuses of the orderly transition period. The MSRB believes that this overall approach strikes the appropriate balance between accommodating the need for municipal advisors to act consistently with their fiduciary duties and the need to address the appearance of, or actual, quid pro quo corruption involving municipal advisors.

Excluded Contributions

Proposed amendments to Rule G-37(b)(ii) would consolidate in one provision the types of contributions that do not currently subject a dealer to a ban on applicable business, and would extend the same exclusions to municipal advisors. The first exclusion is for de minimis contributions, and the second and third exclusions are modifications of the two-year look-back provision that would otherwise apply, as explained below.

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79 See discussion in "Public Disclosure of Contributions and Other Information," infra.

De Minimis Contributions. Under current Rule G-37(b)(i), contributions made by an MFP to an issuer official for whom the MFP is entitled to vote will not trigger a ban on municipal securities business if such contributions do not, in total, exceed $250 per election.[80] The proposed amendments to Rule G-37 would retain this exclusion for MFPs of dealers in proposed Rule G-37(b)(ii)(A). Proposed Rule G-37(b)(ii)(A) also would extend this exclusion to the MAPs of all municipal advisors, including the MAPs of municipal advisor third-party solicitors. If a contribution by an MAP of a municipal advisor third-party solicitor would meet the de minimis exclusion, neither the municipal advisor third-party solicitor nor the dealer client or municipal advisor client for which it was engaged to solicit business would be subject to a ban. In addition, proposed Rule G-37(b)(ii)(A) would incorporate non-substantive changes to the de minimis exclusion in current Rule G-37 to improve the readability of the provision.

Other Excluded Contributions. Currently, under Rule G-37, according to what is known as the "two-year look-back," a dealer is generally subject to a ban on municipal securities business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person, who, although now an MFP of a dealer, was not an MFP of the dealer at the time he or she made the contribution. The proposed rule change would retain the two-year look-back for MFPs[81] and would extend it to the MAPs of municipal advisors that are not municipal advisor third-party solicitors[82] as well as municipal advisors that are municipal advisor third-party solicitors.[83]

Currently, the two-year look-back is modified under Rule G-37 in two situations. Under Rule G-37(b)(ii), contributions to an issuer official by an individual that is an MFP solely based on his or her solicitation activities for the dealer are excluded and do not trigger a ban on municipal securities business for the dealer, unless such MFP (who is so

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80 For purposes of the de minimis exclusion, primary elections and general elections are separate elections. Therefore if an official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official may, within the scope of the de minimis exclusion, contribute up to $250 to the official in a primary election and again contribute a separate $250 to the same official in a general election. See MSRB Rule G-37 Interpretive Notice – Application of Rule G-37 to Presidential Campaigns of Issuer Officials (March 23, 1999).

81 See proposed Rule G-37(b)(i)(A).

82 See proposed Rule G-37(b)(i)(B).

83 See proposed Rule G-37(b)(i)(C). The ban on business for the dealer or municipal advisor, like the current treatment under Rule G-37, would only begin when such individual becomes an MFP or MAP of the dealer or municipal advisor, as applicable.

characterized solely based on his or her solicitation activities for the dealer) subsequently solicits municipal securities business from the same issuer. The proposed amendments to Rule G-37 would relocate to proposed paragraph (b)(ii)(B) this exclusion applicable to such MFPs ("dealer solicitors" as defined in proposed Rule G-37(g)(ii)(B)) and would extend it to MAPs that perform a similar solicitation function within a municipal advisory firm ("municipal advisor solicitors" as defined in proposed Rule G-37(g)(iii)(B)). To improve the readability of this provision, Rule G-37(b)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by the proposed descriptive terms (discussed above) rather than by cross-reference to the relevant definitions. Lastly, a technical amendment would be incorporated in proposed Rule G-37(b)(ii)(B) to clarify that the non-solicitation condition would not be required to be met for the contribution to be excluded after two years have elapsed since the making of the contribution.

Currently, under Rule G-37(b)(iii), contributions by MFPs who have that status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management committee (i.e., those persons described in paragraphs (C), (D) and (E) of current Rule G-37(g)(iv), the definition of municipal finance professional) are excluded and do not trigger a ban on municipal securities business if such contributions were made more than six months before the contributor obtained (including by designation) his or her MFP status. The proposed amendments to Rule G-37 would relocate to paragraph (b)(ii)(C) this exclusion applicable to such MFPs (i.e., "municipal finance principals," "dealer supervisory chain persons," and "dealer executive officers" as defined in proposed Rule G-37(g)(ii)(C), (D) and (E)) and, similarly, would treat contributions made, under the same circumstances, by the analogous categories of MAPs as excluded contributions. The analogous categories of MAPs would be those MAPs that have MAP status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management committee (i.e., "municipal advisor principals," "municipal advisor supervisory chain persons," and "municipal advisor executive officers" as defined in proposed Rule G-37(g)(iii)(C), (D) and (E)). To improve the readability of this provision, proposed Rule G-37(b)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by the proposed descriptive terms rather than by cross-references to the relevant definitions.

Prohibition on Soliciting and Coordinating Contributions

Currently, Rule G-37(c)(i) prohibits a dealer and an MFP of the dealer from soliciting any person or PAC to make any contribution or coordinating any contributions to an issuer official with which the dealer is engaging or is seeking to engage in municipal securities business. The proposed amendments to this subsection would retain this prohibition with respect to dealers and their MFPs and would extend the prohibition to municipal advisors and their MAPs. Further, to ensure a relevant nexus exists between the type of business in which a regulated entity engages or seeks to engage and its solicitation or coordination of any contributions to an ME official with the influence to award such business, proposed subsection (c)(i) would be amended to distinguish contributions based on the type of influence held by the ME official.

Thus, under proposed subsection (c)(i), a dealer and an MFP of the dealer would be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with dealer selection influence with which municipal entity the dealer is engaging, or is seeking to engage, in municipal securities business. Similarly, a municipal advisor and an MAP of the municipal advisor would be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with municipal advisor selection influence with which municipal entity the municipal advisor is engaging, or is seeking to engage, in municipal advisory business. In addition, in light of the nexus that exists between a municipal advisor third-party solicitor's business (to solicit business on behalf of dealers, municipal advisors and investment advisers) and ME officials of every type, the prohibition on soliciting and coordinating contributions would apply, for municipal advisor third-party solicitors, to the solicitation or coordination of contributions to any ME official, if the ME official has municipal advisor selection influence, dealer selection influence or investment adviser selection influence.

Because dealer-municipal advisors engage in both municipal securities business and municipal advisory business, and consistent with the principle that dealer-municipal advisors should be treated as a single economic unit, proposed subsection (c)(i) would not, for dealer-municipal advisors, distinguish a contribution given to an official of a municipal entity with dealer selection influence from one given to an official of a municipal entity with municipal advisor selection influence. Thus, a dealer-municipal advisor, its MFPs, and its MAPs would be prohibited from soliciting any person or PAC to make any contribution or coordinating any contributions to an official of a municipal entity with dealer selection influence or municipal advisor selection influence with which municipal entity the dealer-municipal advisor is engaging or is seeking to engage in municipal securities business or municipal advisory business. If the dealer-municipal advisor is a municipal advisor third-party solicitor, the dealer-municipal advisor and its MAPs would also be prohibited from soliciting or coordinating contributions to an official with investment adviser selection influence.

Currently, Rule G-37(c)(ii) prohibits a dealer and three of the five categories of MFPs as defined, respectively, in current Rule G-37(g)(iv)(A), (B) and (C), from soliciting any person or PAC to make any payment or coordinate any payments to a political party of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Proposed amendments to this subsection would retain this prohibition with respect to dealers and these categories of MFPs and would extend the prohibitions to municipal advisors and the three analogous categories of MAPs ("municipal advisor representatives," "municipal advisor solicitors," and "municipal advisor principals," as defined, respectively, in proposed Rule G-37(g)(iii)(A), (B) and (C)). To improve the readability of this provision, Rule G-37(c)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by their proposed descriptive terms, rather than by cross-references to the relevant definitions.

Prohibition on Circumvention of Rule

Rule G-37(d) currently prohibits a dealer and any MFP of the dealer from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of the ban on municipal securities business or the prohibition on soliciting or coordinating contributions. Proposed amendments to this section would retain this prohibition with respect to dealers and their MFPs and would extend it to municipal advisors and their MAPs.

Public Disclosure of Contributions and Other Information

Currently, Rule G-37(e) contains broad public disclosure requirements to facilitate enforcement of Rule G-37 and to promote public scrutiny of dealers' political contributions and municipal securities business. Under the provision, dealers are required to disclose publicly on Form G-37 information about certain: (i) contributions to issuer officials; (ii) payments to political parties of states or political subdivisions; (iii) contributions to bond ballot campaigns; and (iv) information regarding municipal securities business with issuers. Currently, Form G-37 may be provided to the Board in paper or electronic form.

The proposed amendments to Rule G-37(e) would retain these disclosure requirements for dealers, except such requirements would apply to contributions to "officials of municipal entities," which is a potentially broader group of recipients than "officials of an issuer."[84] The disclosure requirements would also apply to municipal securities business with "municipal entities" rather than "issuers." Proposed amendments to Rule G-37(e)(iv), however, would remove the option of making paper, rather than electronic, submissions to the Board.

For municipal advisors, the disclosure requirements of proposed amended Rule G-37(e), would be substantially similar to those for dealers, with one exception for municipal advisor third-party solicitors. The proposed amendments to Rule G-37(e)(i)(C) would require municipal advisor third-party solicitors to list on Form G-37 the names of the third parties on behalf of which they solicited business as well as the nature of the business solicited. The proposed amendments to Rule G-37(e)(iv) would require municipal advisors, like dealers, to submit the required disclosures to the Board in electronic form. The MSRB also proposes to incorporate minor, non-substantive changes to section (e) to improve the readability of the section.

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[84] The MSRB does not propose to amend the existing disclosure requirements to limit the disclosure of contributions based on the relevant ME official's type of influence. Rather, to further the purposes of the proposed rule change, including permitting the public to scrutinize the political contributions of regulated entities and to address the appearance of quid pro quo corruption, the applicable disclosures would be required for contributions to any type of ME official.

Currently, Rule G-37(f) permits dealers to submit additional voluntary disclosures to the Board. The proposed amendments to Rule G-37(f) would make no change in this respect for dealers and would permit municipal advisors also to make voluntary disclosures.

Definitions

Current Rule G-37(g) sets forth definitions for several terms used in Rule G-37. Proposed amendments to this section (which are not addressed in detail elsewhere in this filing) would add to Rule G-37 new defined terms and would modify existing defined terms in large part to make the appropriate provisions of Rule G-37 applicable to municipal advisors and their associated persons. The first new defined term, "regulated entity," in proposed Rule G-37(g)(i), would mean "a dealer or municipal advisor," and the terms "regulated entity," "dealer" and "municipal advisor" would exclude the entity's associated persons. With the addition of the defined term "regulated entity" current Rule G-37(g)(iii), which distinguishes dealers from their associated persons, would be deleted as unnecessary. The definition of "reportable date of selection" would be amended to apply it to municipal advisors, to slightly reorganize the definition and to relocate it from Rule G-37(g)(xi) to proposed Rule G-37(g)(xviii).

Several of the proposed new defined terms for municipal advisors would be analogous to the defined terms applicable to dealers in current Rule G-37. Proposed Rule G-37(g)(xiv) would define the new term "non-MAP executive officer" regarding the executive officers of a municipal advisor in a manner analogous to the term "non-MFP executive officer" applicable to executive officers of dealers under proposed Rule G-37(g)(xv).[85] Also, proposed Rule G-37(g)(iv) would define the new term "bank municipal advisor" in a manner analogous to the current definition of the term "bank dealer" under Rule D-8.[86] The term "municipal advisor" would be defined based on the

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85 The current definition of "Non-MFP executive officer" would be relocated from Rule G-37(g)(v) to proposed Rule G-37(g)(xv) and incorporate minor, technical changes to the term (e.g., to update a cross-reference and to replace the phrase "broker, dealer or municipal securities dealer," with "dealer").

86 "Bank municipal advisor" is defined in proposed Rule G-37(g)(iv) to mean:

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

Rule D-8 defines the term "bank dealer" to mean "a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G-1 of the Board."

definition of the term in the Exchange Act and Commission rules.[87]

The proposed amendments would renumber and relocate a number of definitions in Rule G-37(g) as follows: "bond ballot campaign" would be relocated from subsection (g)(x) to proposed subsection (g)(v); "issuer" would be relocated from subsection (g)(ii) to proposed subsection (g)(vii); "payment" would be relocated from subsection (g)(viii) to proposed subsection (g)(xvii); "municipal securities business" would be relocated from subsection (g)(vii) to proposed subsection (g)(xii); and "contribution" would be relocated from subsection (g)(i) to proposed subsection (g)(vi). With the exception of substituting the term "municipal entity" in place of "issuer" in the definition of the terms "contribution" and "municipal securities business," the proposed amendments to Rule G-37(g) would not substantively amend the definitions of these terms.

Operative Date

Current Rule G-37(h) provides that a ban on business under the rule arises only from contributions made on or after April 25, 1994 (the original effective date of Rule G-37). Proposed amendments to section (h) would provide that a ban on applicable business under the rule would arise only from contributions made on or after an effective date to be announced by the MSRB in a regulatory notice published no later than two months following SEC approval, which effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following SEC approval. However, with respect to dealers and dealer-municipal advisors that are currently subject to the requirements of Rule G-37, any ban on municipal securities business that was already triggered before the effective date of the proposed rule change would remain in effect and end according to the provisions of Rule G-37 as in effect at the time of the contribution that triggered the ban.

Exemptions

Rule G-37 currently provides two mechanisms through which a dealer may be exempted from a ban on municipal securities business. First, under current Rule G-37(i), a registered securities association of which a dealer is a member, or another appropriate regulatory agency[88] (collectively, "agency") may, upon application, exempt a dealer from

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87 "Municipal advisor" is defined in proposed Rule G-37(g)(viii) to mean:

> a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder.

88 Under MSRB Rule D-14, "[w]ith respect to a broker, dealer, or municipal securities dealer, 'appropriate regulatory agency' has the meaning set forth in Section 3(a)(34) of the Act."

a ban on municipal securities business. In determining whether to grant the exemption, the agency must consider, among other factors:

- whether the exemption is consistent with the public interest, the protection of investors and the purposes of the rule;
- whether, prior to the time a triggering contribution was made, the dealer had developed and instituted procedures reasonably designed to ensure compliance with the rule, and had no actual knowledge of the triggering contribution;
- whether the dealer has taken all available steps to cause the contributor to obtain a return of the triggering contribution(s), and has taken other remedial or preventive measures as appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the triggering contribution and all employees of the dealer;
- whether, at the time of the triggering contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment;
- the timing and amount of the triggering contribution;
- the nature of the election (e.g., federal, state or local); and
- the contributor's apparent intent or motive in making the triggering contribution, as evidenced by the facts and circumstances surrounding the triggering contribution.[89]

The proposed amendments to section (i) would extend its provisions to municipal advisors, including municipal advisor third-party solicitors, and bans on municipal advisory business, on generally analogous terms. The proposed amendments would provide a process for municipal advisors subject to a ban on municipal advisory business to request exemptive relief from such ban on business from a registered securities association of which is it a member or the Commission, or its designee, for all other municipal advisors. Dealer-municipal advisors seeking exemptive relief from a ban on municipal securities business and a ban on municipal advisory business must, for each type of ban, seek relief from the applicable agency or agencies. With respect to dealers, the proposed amendments to section (i) would also make minor, non-substantive changes to improve its readability.

Under the proposed amendments, in determining whether to grant the requested exemptive relief from a ban on municipal advisory business, the relevant agency would be required to consider the factors, with limited modifications, that currently apply when a request for exemptive relief is made by a dealer. The proposed modifications to the factors are limited to those necessary to reflect their application to both dealers and

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89 See Rule G-37(i).

municipal advisors[90] and to make them otherwise consistent with previously discussed proposed amendments to Rule G-37. Specifically, subsection (i)(i), which currently requires an agency to consider whether the requested exemptive relief would be "consistent with the public interest, the protection of investors and the purposes of" Rule G-37, would be amended to require consideration also of whether such exemptive relief would be consistent with the protection of municipal entities and obligated persons. In addition, as incorporated throughout the proposed amended rule, the term "regulated entity" would be substituted for the deleted phrase, "broker, dealer or municipal securities dealer."

As previously discussed, under the proposed amendments to Rule G-37(b), a contribution made by an MAP of a municipal advisor third-party solicitor soliciting business for a dealer client or a municipal advisor client would subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business. Under the proposed amendments to section (i), if either the municipal advisor third-party solicitor or the regulated entity client desired exemptive relief from the applicable ban on business, the entity that desired relief would be required to separately apply for the exemptive relief and independently satisfy the relevant agency that the application should be granted.

Second, under Rule G-37(j)(i), a dealer currently may avail itself of an automatic exemption (i.e., without the need to apply to an agency) from a ban triggered by its MFP if the dealer: discovered the contribution within four months of the date of contribution; the contribution did not exceed $250; and the MFP obtained a return of the contribution within sixty days of the dealer's discovery of the contribution. Rule G-37(j)(ii) currently limits the number of automatic exemptions available to a dealer to no more than two automatic exemptions per twelve-month period. Rule G-37(j)(iii) currently further limits the use of the automatic exemption, providing that a dealer may not execute more than one automatic exemption relating to contributions made by the same person (i.e., an individual MFP) regardless of the time period.

The proposed amendments to section (j) would extend its provisions to all municipal advisors and bans on municipal advisory business. A municipal advisor could avail itself of an automatic exemption from a ban triggered by an MAP of the municipal

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90 For example, in the case of a municipal advisor, the proposed amendments to Rule G-37(i)(iii) would require an agency to consider whether, at the time of the triggering contribution, the contributor was an MAP, otherwise an employee of the municipal advisor, or was seeking such employment, or was an MAP or otherwise an employee of a municipal advisor third-party solicitor engaged by the municipal advisor, or was seeking such employment.

advisor upon satisfaction of conditions that are the same or analogous[91] to those currently applicable to dealers. Similarly, a dealer-municipal advisor subject to a cross-ban could avail itself of an automatic exemption from a ban on applicable business upon satisfaction of the applicable conditions.[92] In addition, when a contribution made by an MAP of the municipal advisor third-party solicitor soliciting business for a regulated entity client would subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business, each would be allowed to avail itself of an automatic exemption if it separately met the specified conditions. The use of an automatic exemption would count against a regulated entity's allotment (of no more than two automatic exemptions) per twelve-month period, regardless of whether the contribution that triggered the ban was made by an MFP or an MAP of that regulated entity or by an MAP of an engaged municipal advisor third-party solicitor.

Proposed Amendments to Rules G-8 and G-9 and Forms G-37 and G-37x

The proposed amendments to Rule G-8 (books and records) and Rule G-9 (preservation of records) would make related changes to those rules based on the proposed amendments to Rule G-37. The proposed amendments to Rule G-8 would add a new paragraph (h)(iii) to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons as currently exist for dealers and their associated persons. With respect to dealers, minor conforming proposed amendments to Rule G-8(a)(xvi) would be incorporated to conform the recordkeeping requirements of the rule to the proposed amendments to Rule G-37 regarding dealers. For example, the proposed rule change would incorporate in Rule G-8(a)(xvi) certain terms added to the definition of municipal finance professional, and the obligation to submit Forms G-37 and G-37x to the Board in electronic form.

The proposed amendments to Rule G-9(h) would generally require municipal advisors to preserve for six years the records required to be made in proposed amended Rule G-8(h)(iii), consistent with the analogous retention requirement in Rule G-9(a) for dealers.

The proposed amendments to Forms G-37 and G-37x would permit the forms to be used by both dealers and municipal advisors to make the disclosures that would be required by proposed amended Rule G-37(e). Dealer-municipal advisors could make all

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91 For example, in the case of a municipal advisor pursuing an automatic exemption, the proposed amendments to Rule G-37(j)(i)(C) would require the MAP-contributor to obtain the return of the triggering contribution.

92 A cross-ban would be considered one ban on business. Thus, under section (j)(ii), as proposed to be amended, the execution by a dealer-municipal advisor of the automatic exemptive relief provision to address a cross-ban would be the execution of one exemption.

required disclosures on a single Form G-37.

(b) Statutory Basis

Section 15B(b)(2) of the Exchange Act[93] provides that

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[94] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. It would address potential "pay to play" practices by municipal advisors involving corruption or the appearance of corruption. Doing so is consistent with the intent of Congress in granting rulemaking jurisdiction over municipal advisors to the MSRB. As the Commission has recognized, the regulation of municipal advisors and their advisory activities is generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices.[95] Indeed, the relevant legislative history indicates that Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already "has an

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93 15 U.S.C. 78o-4(b)(2).

94 15 U.S.C. 78o-4(b)(2)(C).

95 See Order Adopting SEC Final Rule, 78 FR at 67469, 67475 nn.104-6 and accompanying text (discussing relevant enforcement actions); Senate Report, at 38.

existing, comprehensive set of rules on key issues such as pay-to-play and . . . that consistency would be important to ensure common standards."[96]

The proposed amendments to Rule G-37 would subject all municipal advisors, including municipal advisor third-party solicitors, to "pay to play" regulation that is consistent with the MSRB's regulation of dealers.[97] Like dealers, municipal advisors that seek to influence the award of business by government officials by making, soliciting or coordinating political contributions to officials can distort and undermine the fairness of the process by which government business is awarded, creating artificial impediments to a free and open market in municipal securities and municipal financial products. These practices can harm obligated persons, municipal entities and their citizens by resulting in inferior services and higher fees, as well as contributing to the violation of the public trust of elected officials who might allow political contributions to influence their decisions regarding public contracting. "Pay to play" practices are rarely explicit: participants do not typically let it be known that contributions or payments are made or accepted for the purpose of influencing the selection of a municipal advisor (or dealer, municipal advisor or investment adviser on behalf of which a municipal advisor acts as a solicitor).[98] Nonetheless, numerous developments in recent years have led the MSRB to conclude that the selection of market participants that may now be defined as municipal advisors has been influenced by "pay to play" practices and that political contributions as the quid pro quo for the award of valuable financial services contracts have been funneled through third parties that may now be municipal advisor third-party solicitors as defined in the proposed rule change. These include public reports of "pay to play" practices involving the use of persons that may now be defined as municipal advisors,[99] legislative and

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96 Senate Report, at 149.

97 Some financial advisory firms that may now be defined as municipal advisory firms are registered as dealers and therefore subject to current Rule G-37. With respect to municipal advisors that are not dealers, as of 2009, approximately fifteen states had some form of "pay to play" prohibition, some of which were broad enough to apply to financial advisory services. Some municipalities also have such rules. In many cases, the limited and patchwork nature of these state and local laws has not been effective in addressing in a comprehensive way the possibility and appearance of "pay to play" practices in the municipal securities market. See Statement of Ronald A. Stack, Chair, MSRB, Before the Senate Committee on Banking, Housing and Urban Affairs (Mar. 26, 2009).

98 See Blount, 61 F.3d at 945 ("While the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather indirectly…."); id. ("[N]o smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic.").

99 See, e.g., Randall Jensen, Some California FAs Use Pay-to-Play Tactics, Critics Say, Bond Buyer, May 24, 2012 (suggesting that some financial advisors may

regulatory statements regarding the activity engaged in by some persons that may now be defined as municipal advisors,[100] market participant comments submitted to the MSRB regarding "pay to play" regulation,[101] and a number of enforcement actions involving

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engage in "pay to play" practices in the municipal market and noting that they are not currently subject to "pay to play" regulation); Randall Jensen, Brokers' Gifts That Keep Giving, Bond Buyer, January 13, 2012 (suggesting that the selection of dealers, financial advisors and other professionals in connection with bond ballot initiatives is motivated by "pay to play" practices and noting that financial advisors generally donate more than dealers but are not required to disclose contributions to the MSRB); Mary Williams Walsh, Nationwide Inquiry on Bids for Municipal Bonds, N.Y. Times, January 8, 2009, at A1 (reporting that "pay to play" in the municipal bond market was widespread, and specifically referencing "independent specialists who are supposed to help local governments"); Sarah McBride and Leslie Eaton, Legal Run-Ins Dog the Firm in New Mexico Probe, Wall St. J., January 7, 2009 and Mary Williams Walsh, Bond Advice Leaves Pain in Its Wake, N.Y. Times, February 16, 2009 (both describing potential "pay to play" activity in the municipal securities market engaged in by an "unregulated" adviser); Brad Bumsted, Firm in "Pay to Play" Probe Got $770,000 From State, Pittsburgh Trib. Rev., January 6, 2009 (reporting on the political contributions made by the head of a financial advisory firm and the awarding of a financial advisory contract to that firm in the context of a nationwide inquiry into "pay to play" practices in the municipal bond market); and Lynn Hume, SEC Doing Pay-to-Play Examinations, Bond Buyer, July 1, 2004 (reporting SEC plans to examine a number of financial advisors and broker-dealers to determine if they have engaged in "pay to play" activities in the municipal market).

100 See nn. 95 and 97 and accompanying text. See also Bond Regulators Eye Campaign Contribution Abuses, Reuters, April 10, 2003, available at Westlaw, 4/10/03 Reuters News 20:14:27 (citing Commission, MSRB, and NASD (now FINRA) concerns of continued "pay to play" activity in the market, based on reports involving suspicious conduct engaged in by some market participants, including financial advisors); and SEC Report, at 102 ("[O]ther forms of potentially problematic pay-to-play activities involving commodity trading advisors, municipal advisors, or other municipal securities market participants are not yet directly regulated but raise disclosure issues for investors and the market.").

101 Notice of Filing of Proposed Rule Change Relating to Solicitation of Municipal Securities Business Under MSRB Rule G-38, Release No. 34-51561 (April 15, 2005), 70 FR 20782, at 20785-20786 (April 21, 2005) (File No. SR-MSRB-2005-04) (citing comment letters from Jerry L. Chapman, First Southwest Company, Kirkpatrick, Pettis, Smith, Polian Inc., Merrill Lynch and Morgan Keegan & Company, Inc. and stating "[m]any commentators are concerned that, although the problems associated with pay-to-play in the municipal securities industry are

potential "pay to play" practices and financial advisors or third-party intermediaries that may now be defined as municipal advisors.[102]

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not limited to dealers, only dealers are subject to regulation in this area…They urge the MSRB to coordinate efforts with the Commission, NASD and others to apply pay-to-play limits to financial advisors, derivatives advisors, bond lawyers and other market participants") (internal citations omitted); Notice of Filing of a Proposed Rule Change Relating to Amendments to MSRB Rules G-37 and G-8 and Form G-37, Release No. 34-68872 (February 8, 2013), 78 FR 10656, 10663 (February 14, 2013) (File No. SR-MSRB-2013-01) (summarizing comments from market participants that recommend extending the proposed amendments to Rule G-37 regarding increased disclosure of bond ballot contribution information to municipal advisors); Notice of Filing of Proposed New Rule G-42, on Political Contributions and Prohibitions on Municipal Advisory Activities; Proposed Amendments to Rules G-8, on Books and Records, G-9, on Preservation of Records, and G-37, on Political Contributions and Prohibitions on Municipal Securities Business; Proposed Form G-37/G-42 and Form G-37x/G-42x; and a Proposed Restatement of a Rule G-37 Interpretive Notice, Release No. 34-65255 (September 2, 2011), 76 FR 55976 at 55983 (September 9, 2011) (File No. SR-MSRB-2011-12) (withdrawn) (quoting commenter NAIPFA) ("All too often, we see funds and/or campaign services being contributed to bond campaigns by underwriters [and] financial advisors . . . who end up providing services for the bond transaction work once the election is successful."). From the time that the MSRB first proposed "pay to play" regulation for the municipal securities market, it has received comments from market participants requesting the extension of such regulation to persons that may now be deemed municipal advisors. See Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, Release No. 34-33482 (January 14, 1994), 59 FR 3389, 3402-03 (January 21, 1994) (File No. SR-MSRB-94-02) (summarizing concerns from several commenters that Rule G-37, as initially proposed in 1994, did not apply to certain market participants including third-party solicitors and independent financial advisors).

102 Financial regulators have brought enforcement actions charging financial advisors with violations of various MSRB fair practice rules in connection with alleged activities that follow or include "pay to play" practices and quid pro quo exchanges. Other enforcement actions are in response to a specific violation of Rule G-37. See, e.g., In re Wheat, First Securities, Inc., SEC Initial Dec. Rel. No. 155 (December 17, 1999) (finding violation of Rule G-17 and Florida fiduciary duty law for financial advisor's false disclosures to municipal entity regarding the use of a third party─who had "[o]ver the years, . . . made hundreds, if not thousands, of political contributions" that "secure[d]" his access to officials─to secure its advisory contract with the county); In re RBC Capital Markets Corp., SEC Release No. 59439 (February 24, 2009) (finding that a financial advisor

The proposed rule change is expected to aid municipal entities that choose to engage municipal advisors in connection with their issuance of municipal securities as well as transactions in municipal financial products by promoting higher ethical and professional standards of such advisors and helping to ensure that the selection of such municipal advisors is based on merit and not tainted by quid pro quo corruption or the appearance thereof. The MSRB also believes that, by applying the proposed rule change to municipal advisor third-party solicitors, the proposed rule change will level the playing field upon which dealers and municipal advisors (and the third-party dealer, municipal advisor and investment adviser clients of such solicitors) compete because all such persons would be subject to the same or similar requirements.

These parties play a valuable role in the municipal securities market, in the course of providing financial and related advice or in underwriting the securities. The mere perception of quid pro quo corruption among such professionals may breed actual quid pro quo corruption as municipal advisors, dealers, investment advisers and ME officials alike may feel compelled to take part in "pay to play" practices in order to avoid a

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made advances in violation of Rule G-20 on behalf of a municipal entity client to pay for travel and entertainment expenses unrelated to the bond offering); FINRA Letter of Acceptance, Waiver and Consent No. 2009016275601 (February 8, 2011) (finding that dealer that also engaged in financial advisory activities violated a number of MSRB rules, including engaging in municipal securities business notwithstanding a triggering contribution under Rule G-37, and making payments to unaffiliated individuals for the solicitation of municipal securities business under Rule G-38). Criminal authorities have also brought actions against a former Philadelphia treasurer, municipal securities professionals and a third-party intermediary seeking business on behalf of such municipal securities professionals for their participation in a complex scheme involving "pay to play" practices. See, e.g., Indictment U.S. v. White, et al., No. 04-370 (E.D. Pa. June 29, 2004). In addition, the Commission brought and settled charges against the former treasurer of the State of Connecticut and other parties alleging that engagements to provide investment advisory services were awarded as the quid pro quo for payments made to officials that were funneled through third-party intermediaries. See, e.g., SEC v. Paul J. Silvester, et al., Litigation Release No. 16759 (October 10, 2000); Litigation Release No. 20027 (March 2, 2007); Litigation Release No. 19583 (March 1, 2006); Litigation Release No. 16834 (December 19, 2000). Similar activity in connection with investment advisers seeking to manage the assets of the New York State Common Retirement Fund resulted in guilty pleas to criminal charges and remedial sanctions in parallel administrative orders. See, e.g., SEC v. Henry Morris, et al., Litigation Release No. 22938 (March 10, 2014). For further instances of "pay to play" activity involving third-party intermediaries and solicitors that may now be defined as municipal advisors, see Order Adopting IA Pay to Play Rule, 75 FR at 41019-20.

competitive disadvantage as compared to similarly situated parties they believe do engage in such practices. The appearance of quid pro quo corruption in the selection of municipal securities professionals also diminishes investor confidence in the ability or willingness of a dealer, municipal advisor or investment adviser to faithfully fulfill its obligations to municipal entities and the investing public. Such apparent quid pro quo corruption also creates artificial impediments to a free and open market as professionals that believe that "pay to play" practices are a prerequisite to the receipt of government business but are unwilling or unable to engage in such practices may be reluctant to enter the market and provide to issuers and investors their honest, and potentially more qualified, services. The proposed rule change is expected to curb such quid pro quo corruption and the appearance thereof.

Further, the disclosure requirements contained in the proposed rule change will serve to give regulators and the market, including investors, transparency regarding the political contributions of municipal advisors and thereby promote market integrity. The combined effect of the ban on business provisions and the disclosure provisions will serve to reduce the appearance of quid pro quo corruption in the municipal market and enhance the ability of the MSRB and other regulators to detect and deter fraudulent or manipulative acts and practices in connection with the awarding of municipal securities business and municipal advisory business (and engagements to provide investment advisory services to the extent a municipal advisor third-party solicitor is used to obtain or retain such business).

Additionally, upon a finding by the Commission that the proposed rule change imposes at least substantially equivalent restrictions on municipal advisors as the IA Pay to Play Rule imposes on investment advisers and that the proposed rule change is consistent with the objectives of the IA Pay to Play Rule, the proposed rule change would serve as a means to permit investment advisers to continue to pay municipal advisors for the solicitation of investment advisory services on behalf of the investment adviser.[103]

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103 The IA Pay to Play Rule prohibits an investment adviser and its covered associates from providing or agreeing to provide payment to any person to solicit a government entity for investment advisory services unless the person is, in relevant part, a "regulated person." See 17 CFR 275.206(4)-5(a)(2)(i)(A). A "regulated person" includes a municipal advisor, provided that MSRB rules prohibit such municipal advisors from engaging in distribution or solicitation activities if certain political contributions have been made; and the Commission finds that such rules impose substantially equivalent or more stringent restrictions on municipal advisors as the IA Pay to Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the IA Pay to Play Rule (the "SEC finding of substantial equivalence"). See 17 CFR 275.206(4)-5(f)(9)(iii). The compliance date for the IA Pay to Play Rule's ban on third-party solicitation is July 31, 2015. See Investment Advisers Act Release No. 4129 (June 25, 2015), 80 FR 37538 (July 1, 2015). However, the staff of the SEC's Division of Investment Management has indicated that until the later of (i) the effective

Section 15B(b)(2)(L)(iv) of the Act[104] requires that rules adopted by the Board

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, the MSRB believes it is necessary and appropriate to address "pay to play" practices in the municipal market. The MSRB believes that the approach taken under the proposed rule change (which has for more than two decades applied to dealers of diverse sizes) would appropriately accommodate the diversity of the municipal advisor population, including small municipal advisors and sole proprietorships.

The MSRB recognizes that municipal advisors would incur costs to meet the requirements set forth in the proposed rule change. These costs may include additional compliance and recordkeeping costs associated with initially establishing compliance regimes and ongoing compliance, as well as separate legal and compliance fees associated with the triggering of a ban on applicable business or an application for relief from such a ban. Small municipal advisors, however, will necessarily have fewer personnel whose contributions may trigger disclosure obligations or subject the municipal advisory firm to a ban on applicable business under the proposed rule change. Small municipal advisors can also reasonably be expected to have relatively fewer municipal advisory engagements than larger firms and fewer municipal entities with whom they engage in municipal advisory business. Thus, their compliance costs are likely to be significantly lower than relatively larger municipal advisors.

The MSRB also believes that the proposed amendments to Rule G-37(i) regarding

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> date of a FINRA "pay to play" rule that obtains the SEC finding of substantial equivalence or (ii) the effective date of an MSRB "pay to play" rule that obtains the SEC finding of substantial equivalence, it would not recommend enforcement action to the Commission against an investment adviser or its covered associates for violation of the IA Pay to Play Rule's ban on third-party solicitation. See SEC, Staff Responses to Questions About the Pay to Play Rule, at Question I.4, available at https://www.sec.gov/divisions/investment/pay-to-play-faq.htm. The proposed rule change is intended to impose at least substantially equivalent standards on municipal advisors to the standards imposed on investment advisers under the IA Pay to Play Rule for purposes of the SEC finding of substantial equivalence, however, such a finding may be made only by the Commission.

104 15 U.S.C. 78o-4(b)(2)(L)(iv).

application for an exemption from a ban on applicable business and proposed amendments to Rule G-37(j) regarding the automatic exemption from a ban on applicable business provide significant relief to all municipal advisors, including small municipal advisors, from the consequences of an inadvertent triggering contribution. In particular, the automatic exemption provision would provide a regulated entity relief from a ban on applicable business without the need to resort to a formal application for an exemption, which may involve the use of outside legal counsel or compliance professionals.

Additionally, because small municipal advisors can be reasonably expected to employ fewer personnel and/or have fewer engagements, they are likely to have less information to report to the MSRB under the proposed rule change. Further, municipal advisors that meet the standards to file a Form G-37x in lieu of a Form G-37 may avail themselves of relief from all other reporting obligations as long as they continue to meet those standards. Thus, the MSRB believes that the proposed rule change is consistent with the Dodd-Frank Act's provision with respect to burdens that may be imposed on small municipal advisors.

Finally, the MSRB believes that the proposed rule change will allow small municipal advisors to compete based on merit rather than their ability or willingness to make political contributions, which may be a significant benefit relative to the status quo.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[105] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would require, under proposed amendments to Rule G-8, that a municipal advisor make and keep certain records concerning political contributions and the municipal advisory business in which the municipal advisor engages. Proposed amendments to Rule G-9 would require that these records be preserved for a period of at least six years. The MSRB believes that the proposed amendments to Rules G-8 and G-9 related to recordkeeping and records preservation will promote compliance and facilitate enforcement of the proposed amendments to Rule G-37.

4. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[106] requires that MSRB rules not be

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105 15 U.S.C. 78o-4(b)(2)(G).

106 15 U.S.C. 78o-4(b)(2)(C).

designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act provides that MSRB rules may

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[107]

The Board's Policy on the Use of Economic Analysis in Rulemaking, according to its transitional terms, does not apply to the Board's consideration of the proposed rule change, as the rulemaking process for the proposed rule change began prior to the adoption of the policy. However, the policy can still be used to guide the consideration of the proposed rule change's burden on competition. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this filing.

The Board has evaluated the potential impacts of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB does not believe that the proposed rule change will impose any additional burdens, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the MSRB believes that the proposed rule change is likely to increase fair competition.

"Pay to play" practices may interfere with the process by which municipal advisors or the third-party clients of a municipal advisor third-party solicitor are chosen since the receipt of contributions made by such persons might influence an ME official to award business based, not on merit, but on the contributions received. "Pay to play" practices may also raise artificial barriers to entry and detract from fair competition among municipal advisors and the third-party clients of municipal advisor third-party solicitors.[108]

The MSRB believes that the proposed rule change will make it more likely that municipal advisors (and the third-party clients of a municipal advisor third-party solicitor) will be selected based on merit and cost, rather than on contributions to political officials. By serving to level the playing field upon which municipal advisors compete for

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107 15 U.S.C. 78o-4(b)(2)(L)(iv).

108 Because of the illicit nature of the activity, quantifying the extent of quid pro quo corruption is difficult. In its order providing for the registration of municipal advisors, however, the Commission noted that the new municipal advisor registration and regulatory regime is intended to mitigate some of the problems observed with the conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, 78 FR at 67469.

business and solicit business for others, the proposed rule change will help curb manipulation of the market for municipal advisory services (and municipal securities business and investment advisory services, to the extent a municipal advisor third-party solicitor is used to obtain or retain such business). Municipal entities are, in turn, more likely to receive higher-quality advice and lower costs in procuring such business and services.

As noted by the SEC in the IA Pay to Play Approval Order, the efficient allocation of advisory business may be enhanced when it is awarded to investment advisers that compete on the basis of price, quality of performance and service and not on the influence of political contributions.[109] It is a similar case with the awarding of municipal advisory business to municipal advisors and municipal securities business to dealers. The SEC also noted in the same approval order that investment advisory firms, and particularly smaller investment advisory firms, will be able to compete based on merit rather than their ability or willingness to make political contributions.[110] The SEC's reasoning is equally applicable to the potential impact on municipal advisors and dealers of the proposed rule change. A merit-based process is likely to result in a more efficient allocation of professional engagements, compared to the baseline state.

In addition, the proposed rule change subjects municipal advisory activities to a regulatory regime comparable to the regulatory regimes for other entities and persons in the financial services industry, in particular those such as dealers or investment advisers who provide services to municipal entities and are subject to existing "pay to play" rules including Rule G-37 and the IA Pay to Play Rule, respectively.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape. The MSRB recognizes that the compliance, supervisory and recordkeeping requirements associated with the proposed rule change may impose costs and that those costs may disproportionately affect municipal advisors that are not also broker-dealers or that have not otherwise previously been regulated in this area. During the comment period, the MSRB sought information that would support quantitative estimates of these costs, but did not receive any relevant data.

The MSRB believes that the SEC estimates of the costs associated with implementing the IA Pay to Play Rule may provide a guide to the initial, one-time costs that previously unregulated municipal advisors might incur under the proposed rule change. Because even the largest municipal advisory firms are generally smaller than large investment advisory firms, however, the MSRB believes the costs of compliance associated with the proposed rule change will be lower than those associated with the IA

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109 See Order Adopting IA Pay to Play Rule, at 41053.

110 See id.

Pay to Play Rule.

The MSRB also recognizes that the proposed rule change may cause some firms—either because they have engaged in competition primarily on the basis of political contributions or because of the costs of compliance—to exit the market. Some municipal advisors may consolidate with other municipal advisors in order to benefit from economies of scale (e.g., by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the proposed rule change. While this might reduce the number of firms competing for business, consolidated firms might compete more effectively on price, which would offer benefits to municipal entities. Some firms wishing to enter the market may find the costs of compliance create barriers to entry. Finally, some dealer-municipal advisors may separate and form dealer-only and municipal advisor-only firms to avoid the "cross-ban." If separations result in lost efficiencies of scope, such firms may compete less effectively on price – potentially raising issuance costs, but the presence of such firms also may potentially foster greater competition, particularly among smaller firms.

The MSRB recognizes that small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule change may be proportionally higher for these smaller firms, potentially leading to exit from the industry or consolidation. However, as the SEC recognized in its Order Adopting SEC Final Rule, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors) or the consolidation of municipal advisors.[111]

The MSRB also believes that the proposed amendments to Rule G-37(i) regarding application for an exemption from a ban on applicable business and proposed amendments to Rule G-37(j) regarding the automatic exemption from a ban on applicable business provide significant relief to all municipal advisors, including small municipal advisors, from the consequences of an inadvertent triggering contribution. In particular, the automatic exemption provision would provide a regulated entity relief from a ban on applicable business without the need to resort to a formal application for an exemption, which may involve the use of outside legal counsel or compliance professionals.

Overall, the MSRB believes that the proposed rule will not, on its own, significantly change the number or concentration of firms offering municipal advisory services and that the increased focus on merit and cost will result in a more competitive market.

The MSRB solicited comment on the potential burdens of the draft amendments to Rules G-37, G-8 and G-9 in a notice requesting comment, which notice incorporated

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111 See Order Adopting SEC Final Rule, at 67608.

the MSRB's preliminary economic analysis.[112] The specific comments and the MSRB's responses thereto are discussed in Part 5.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB received thirteen comment letters in response to the Request for Comment.[113] The comment letters are summarized below by topic and the MSRB's responses are provided.

Support for the Proposed Rule Change

Most commenters supported to some degree the initiative to extend the policies contained in Rule G-37 to municipal advisors. The Public Interest Groups stated that, by recognizing that municipal advisors may play a key role in underwriting and other municipal funding decisions, the MSRB's expansion of the scope of the rule will help promote the integrity of the contracting process. BDA supported the objective of the draft amendments on the grounds that it would create a level playing field between dealers and municipal advisors. SIFMA maintained that it is important that all market participants are subject to the same rules applicable to political activity, and that the draft amendments significantly advance that interest. NAIPFA supported the draft amendments without

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112 MSRB Notice 2014-15, Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors (August 18, 2014) ("Request for Comment").

113 Comments were received from American Council of Engineering Companies: Letter from David A. Raymond, President & CEO, dated October 1, 2014 ("ACEC"); Anonymous Attorney: Email from Anonymous, dated October 1, 2014 ("Anonymous"); Bond Dealers of America: Letters from Michael Nicholas, Chief Executive Officer, dated October 1, 2014 ("First BDA") and October 8, 2014 ("Second BDA") (together, "BDA"); Caplin & Drysdale, Chtd.: Letter from Trevor Potter and Matthew T. Sanderson, dated September 30, 2014 ("C&D"); Castle Advisory Company LLC: Email from Stephen Schulz, dated August 18, 2014 ("Castle"); Center for Competitive Politics: Letter from Allen Dickerson, Legal Director, dated October 1, 2014 ("CCP"); Dave A. Sanchez: Letter from Dave A. Sanchez, dated November 5, 2014 ("Sanchez"); Hardy Callcott: Email from Hardy Callcott, dated September 9, 2014 ("Callcott"); National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated October 1, 2014 ("NAIPFA"); Public Citizen, et al.: Letter from Bartlett Naylor, Financial Policy Advocate, et al., dated October 1, 2014 ("The Public Interest Groups"); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 30, 2014 ("SIFMA"); and WM Financial Strategies: Letter from Joy A. Howard, Principal, dated October 1, 2014 ("WMFS").

qualification. Sanchez noted the draft amendments would address practices that create artificial barriers to competition.

Several commenters expressed support for specific provisions in the draft amendments. The Public Interest Groups and CCP supported replacing the term "official of an issuer" with the new defined term "official of a municipal entity." CCP further supported the draft amendments' creation of different categories of "officials of a municipal entity." SIFMA and CCP both expressed support for the purpose for which these categories were created—namely, to ensure that there is a nexus between a contribution and the awarding of business that gives rise to a sufficient risk of corruption, or the appearance thereof, to warrant a ban on applicable business.

De Minimis Contributions

Under draft amended Rule G-37(b)(ii)(A), contributions made by an MFP or MAP to an ME official for whom the MFP or MAP is entitled to vote would be de minimis and would not trigger a ban on municipal securities business or municipal advisory business if such contributions made by such MFP or MAP do not, in total, exceed $250 per election. Five commenters said that the MSRB should harmonize this de minimis exclusion with those set forth for investment advisers under the IA Pay to Play Rule,[114] and two of these five commenters said that the de minimis exclusion should be harmonized with those set forth for swap dealers under the Swap Dealer Rule.[115] As described below, however, the comments differed with regard to the extent of harmonization suggested and the offered rationale for harmonization. Two additional commenters opposed any modification to the de minimis exclusion.[116]

Raising the Threshold for the Existing De Minimis Exclusion

The five commenters that supported greater harmonization agreed that Rule G-37 should be modified to raise the threshold from $250 to $350 for the existing de minimis exclusion under draft amended Rule G-37(b)(ii).

SIFMA, BDA and C&D supported a $350 de minimis threshold principally on the basis of promoting more efficient administration of federal "pay to play" programs and reducing the compliance burdens on those regulated entities that are also subject to the IA

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114 See 17 CFR 275.206(4)-5.

115 See 17 CFR 23.451. BDA, C&D, CCP, Callcott and SIFMA proposed harmonization with the IA Pay to Play Rule. BDA and SIFMA also proposed harmonization with the Swap Dealer Rule.

116 NAIPFA and Sanchez opposed modification to the de minimis exclusion.

Pay to Play Rule and the Swap Dealer Rule[117]—both of which have a de minimis threshold of $350 for a contribution to an official for whom the contributor is entitled to vote.[118] SIFMA expressed the view that both the $250 de minimis threshold in Rule G-37 as well as the $350 de minimis threshold utilized in the IA Pay to Play Rule[119] appear to be somewhat arbitrary. However, it argued, to the extent a de minimis amount is exempted, it should be uniform across the federal "pay to play" regimes. In contrast, NAIPFA expressed unqualified support for the draft amendments and specifically opposed any increase in the de minimis threshold of $250. Sanchez also opposed any change to the de minimis threshold, commenting that Rule G-37 has been an important tool in enhancing free and fair competition and that a change in the de minimis threshold would provide a distinct and unfair advantage to large financial services firms over smaller firms.

CCP and Callcott framed their arguments for a $350 de minimis threshold based on First Amendment concerns. Because the IA Pay to Play Rule[120] appeared to embody a determination that a de minimis threshold of $350 was sufficient to prevent quid pro quo corruption, or the appearance thereof, they suggested the MSRB's proposed $250 de minimis threshold could not be "narrowly tailored to achieve a compelling government interest." While CCP was skeptical as to whether the de minimis thresholds under the IA Pay to Play Rule are consistent with constitutional requirements, it expressed concern that the MSRB did not articulate why these thresholds are not sufficient for purposes of Rule G-37. Callcott argued that, although Rule G-37's $250 de minimis threshold was upheld by the D.C. Circuit in Blount[121] in 1995, the rule cannot continue to withstand constitutional scrutiny in the wake of the IA Pay to Play Rule[122] and Supreme Court cases decided since Blount, including McCutcheon v. FEC.[123] In contrast, Sanchez stated that unlike some of the recent Supreme Court rulings on political contributions, Rule G-37 is narrowly tailored to only affect persons who seek specific types of business with municipal entities and not citizens at large.

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117 C&D also noted that a $350 threshold would partly account for the effects of inflation since the Board first established $250 as the threshold in 1994.

118 See 17 CFR 275.206(4)-5(b)(1); see also 17 CFR 23.451(b)(2)(i)(A).

119 See id.

120 Id.

121 Blount v. SEC, 61 F.3d 938 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996).

122 See 17 CFR 275.206(4)-5.

123 McCutcheon v. FEC, 572 U.S. ___, 134 S. Ct. 1434 (2014) ("McCutcheon").

The MSRB is sensitive to the effect of differing "pay to play" de minimis thresholds for dealers and municipal advisors that also operate in the investment advisory market or the swap market. However, the Board believes that, to the extent possible and appropriate, consistency between the regulatory treatment of dealers and municipal advisors, who operate in the same market and typically with the same clients, is vital to curb quid pro quo corruption or the appearance thereof in the municipal market. Dealers have been subject to the requirements of Rule G-37 for more than two decades, and as commenters have noted, its terms, including its de minimis threshold, have been effective in combating corruption or the appearance of corruption in connection with the awarding of municipal securities business to dealers.[124]

Moreover, as acknowledged by several of the commenters, in Blount, the D.C. Circuit previously determined that Rule G-37 was constitutional on the ground that the rule was narrowly tailored to serve a compelling government interest.[125] The court found the interest in protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be compelling.[126] The MSRB does not believe that differing de minimis threshold determinations for other markets precludes a determination that the MSRB's de minimis threshold for the municipal market is narrowly tailored. The MSRB also believes that commenter references to recent Supreme Court decisions are misplaced. Those cases, for example, did not address regulations aimed at preventing quid pro quo corruption or the appearance thereof with respect to individuals engaged in securities-related business with municipal entities, or even regulations regarding individuals engaged in business with a governmental entity more generally. Additionally, recent jurisprudence relating to political contributions and government contractors implicitly contradicts the notion that Blount does not survive McCutcheon. Wagner, et al., v. FEC,[127] decided en banc by the U.S. Court of Appeals for the District of Columbia Circuit after McCutcheon, unanimously upheld a provision in the Federal Election Campaign Act that prohibits contributions made in connection with federal elections by federal government contractors. In upholding the provision, the Wagner court repeatedly cited Blount with approval, noting that it upheld Rule G-37 against First Amendment challenge[128] and that it found Rule G-37 to be "'closely drawn,' in part because it 'restrict[ed] a narrow range of … activities for a relatively short period of time,' and those subject to the rule were 'not in any way restricted from engaging in the vast

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124 See comment letter from Sanchez; comment letter from SIFMA.

125 See Blount, 61 F.3d at 944, 947-48.

126 See id. at 944.

127 793 F.3d 1 (D.C. Cir. 2015) (en banc) ("Wagner").

128 Id. at n. 19.

majority of political activities.'"[129] Accordingly, the MSRB has determined to extend the current de minimis threshold applicable to dealers in Rule G-37 to municipal advisors through the proposed rule change.

Adding an Additional De Minimis Exclusion

Three of the five commenters that supported greater harmonization also urged the MSRB to add an additional de minimis exclusion for contributions made by an MFP or MAP to an ME official for whom the MFP or MAP is not entitled to vote if such contributions do not, in total, exceed $150 per election.[130] These commenters based their arguments on First Amendment concerns. C&D cited statements by the Commission when it adopted the IA Pay to Play Rule,[131] noting that the Commission acknowledged that the $150 limit for contributions to officials for whom the investment adviser could not vote was justified because non-residents might have legitimate interests in those elections, such as the interest of a resident of a metropolitan area in the city in which the person works. C&D suggested that a similar rationale would apply with respect to personnel of dealers and municipal advisors. Similarly, CCP argued that the Supreme Court's ruling in McCutcheon, reiterating the importance of associational rights, would make little sense if bans on out-of-district contributions were constitutional. Callcott noted that the "narrow tailoring" conclusion of Blount cannot continue to survive and noted that the lack of a de minimis threshold for contributions to ME officials for whom an MAP is not entitled to vote is particularly vulnerable to First Amendment challenge.

In contrast, BDA, SIFMA and Sanchez did not advocate establishing a second de minimis contribution exclusion. BDA expressed concern that such an extension would create considerable chaos in the municipal securities market, and BDA and Sanchez both noted that the current approach in Rule G-37 is accepted and appears to be working well. Specifically speaking to recent Supreme Court jurisprudence, Sanchez expressed the view that Rule G-37 is narrowly tailored to only affect persons who seek specific types of business with municipal entities and not citizens at large.

As discussed above, the MSRB has determined to extend the current de minimis threshold applicable to dealers in Rule G-37 to municipal advisors through the proposed rule change. Current Rule G-37 and the proposed amendments are intended to address quid pro quo corruption and the appearance thereof in connection with the awarding of municipal securities business, municipal advisory business, and engagements to provide investment advisory services. Even in the absence of actual quid pro quo corruption, contributions to officials for whom an MFP or MAP is not entitled to vote are at

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129 Id. at 26 (quoting Blount, 61 F.3d at 947-48).

130 C&D, CCP and Callcott proposed this approach.

131 See comment letter from C&D, citing Order Adopting IA Pay to Play Rule, at 41035.

heightened risk of the appearance of quid pro quo corruption, as the MFP or MAP's non-quid pro quo interest in that election is less likely to be immediately apparent to the public. Rule G-37 has previously withstood constitutional scrutiny and the proposed rule change would not amend the current de minimis thresholds in Rule G-37. The MSRB agrees with Sanchez that the proposed amendments to Rule G-37 are narrowly tailored. The MSRB notes again that comments based upon, or referring to, recent Supreme Court decisions are misplaced. Those cases presented different facts and circumstances and, for example, did not address regulations aimed at preventing quid pro quo corruption or the appearance thereof with respect to individuals engaged in securities-related business with municipal entities, or even regulations regarding individuals engaged in business with a governmental entity as a general matter. Further, as described above, Wagner, decided since McCutcheon, upheld a complete ban with no de minimis exclusion on contributions to federal campaigns by federal contractors. This suggests that Rule G-37's more tailored temporary limitation on business activities resulting from non-de minimis contributions to ME officials with the ability to influence the awarding of business to the regulated entity (and in the case of a municipal advisor third-party solicitor, the regulated entity clients or investment adviser clients of the municipal advisor third-party solicitor) would also survive constitutional scrutiny.

Look-back

SIFMA requested that the MSRB revise the "look-back" for MFPs and MAPs, which would provide that a regulated entity would be subject to a ban on applicable business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person before he or she became a "municipal finance representative" or "municipal advisor representative" of the regulated entity. Under SIFMA's proposed revision, a new exclusion would be added to the "look-back" for a contribution made by an individual that, at the time of the contribution, was subject to either the IA Pay to Play Rule or the Swap Dealer Rule if the contribution was made within the de minimis exceptions under those rules.

The MSRB has determined not to adopt SIFMA's proposed exclusion. The goal of Rule G-37, and the proposed amendments, is to address quid pro quo corruption or the appearance thereof when a contribution is made to an ME official and business of that municipal entity is awarded to the contributor. The MSRB believes that the risk of such corruption or the appearance of such corruption in the municipal securities market is not diminished simply because a contribution does not trigger a ban in a different market under a different regulatory scheme. The exclusion proposed by SIFMA would, in effect, create a bifurcated de minimis threshold: one for MFPs and MAPs that were formerly investment advisers or swap professionals and another for all other MFPs and MAPs. As stated above, the MSRB believes that it is important to have a consistent de minimis threshold applicable to all regulated entities in the municipal market, as they operate in the same market and typically with the same clients.

Official of a Municipal Entity

WMFS suggested that the MSRB remove the concept of the different types of ME officials from the draft definition of "official of a municipal entity."[132] WMFS stated that it was not aware of any elected official that would be able to influence the selection of a municipal advisor without also having the ability to influence the selection of an underwriter. Thus, in its view, the draft amendments to this definition would unnecessarily complicate the rule and could create an enforcement loophole.

CCP, by contrast, welcomed the constitutional "tailoring" of the definition of "official of a municipal entity" through the creation of different categories of ME officials, although it suggested the definition was otherwise overbroad and vague. CCP noted that the definition of the term "official of a municipal entity" would extend to losing candidates who ultimately do not play a role in the selection of any dealer or municipal advisor, and, thus pose "little to no danger of pay-to-play corruption."

The MSRB recognizes that it may be uncommon for an ME official to have the ability to influence the selection of only one type of professional. However, the MSRB has not received any comments that categorically state, much less demonstrate, that there are no such officials. Further, as CCP and other commenters acknowledged, the categories of ME officials are designed to narrowly tailor the rule to ensure that there is a nexus between a contribution made to an ME official and the ability of that ME official to influence the awarding of business to the contributor's firm (or in the case of a municipal advisor third-party solicitor, a regulated entity client or investment adviser client). With regard to CCP's remaining arguments, apart from the creation of the separate categories and the renaming of the "official of an issuer" term to "official of a municipal entity," all other elements of the longstanding "official of an issuer" definition are unchanged from that found in current Rule G-37. The fact that losing candidates ultimately have no influence in the selection of professionals does not avoid the potential appearance of quid pro quo corruption in the case of contributions to candidates. Thus, the MSRB has determined not to revise the definition of "official of a municipal entity" in response to the comments received.

Cross-bans

SIFMA stated that the cross-ban provision in draft amended Rule G-37(b)(i)(C) (proposed paragraph (b)(i)(D)) should be eliminated. SIFMA argued that the cross-ban provision is overly broad and does not comport with the MSRB's stated goal of requiring a link between a triggering contribution and the business banned by that contribution.

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132 The draft amendments included two categories of ME officials: an "official with dealer selection influence" and an "official with municipal advisor selection influence." As described above, the proposed rule change retains these categories and adds an additional category of ME official, an "official of a municipal entity with investment adviser selection influence." See proposed Rule G-37(g)(xvi)(C).

In contrast, The Public Interest Groups supported the cross-ban provision, noting that otherwise permitting contributions from one line of business of a dealer-municipal advisory firm to an ME official that has influence over awarding business to the other line of business within the same firm would invite firms to "create legal fictions for [contributions] between its dealer and advisory services." Sanchez stated that the cross-ban would be appropriate for dealer-municipal advisors because many individuals within such firms engage in both dealer and municipal advisory activity, and to the extent that they do not, the business lines can be very closely related. Thus, Sanchez concluded, a contribution from persons or entities associated with one line of business of a dealer-municipal advisory firm and the awarding of business to the other line of business within the same firm will usually constitute quid pro quo corruption or give rise to the appearance thereof.

The MSRB does not believe that the cross-ban provision is inconsistent with the MSRB's goal of requiring a link between a ban on applicable business and a contribution made to an ME official with the ability to influence the awarding of that type of business. On the contrary, the cross-ban is a special provision narrowly tailored to ensure that the only business a dealer-municipal advisor will be prohibited from engaging in during the two-year period is the business that the ME official to whom the contribution was made had the ability to influence. While the cross-ban would subject a dealer-municipal advisor to a ban of a scope consistent with the type of influence held by the ME official to whom the contribution was made, the scope of the ban would not be dependent on the particular line of business with which the contributor is associated. The MSRB believes that this is the appropriate result given that, even though a dealer-municipal advisor may have two lines of business, the entity should be considered a single economic unit.

Moreover, the goal of the cross-ban is to address actual quid pro quo corruption or its appearance. The comments submitted by Sanchez and The Public Interest Groups support the view that there is a public perception of quid pro quo corruption when business is awarded to a dealer-municipal advisor following the making of a contribution to an ME official with the ability to influence the selection of that firm for such business. These comments further support the MSRB's view that this appearance of quid pro quo corruption is not dependent on the particular line of business with which the contributor is associated.

Municipal Advisor Third-Party Solicitors

Under draft amended Rule G-37(b)(i)(A)(2) and (b)(i)(B)(2) (proposed paragraph (b)(i)(C)(2)), the triggering contributions made to an ME official by a municipal advisor third-party solicitor could trigger a ban on municipal securities business for a dealer that engaged the solicitor, or a ban on municipal advisory business for a municipal advisor that engaged the solicitor. SIFMA opposed these provisions, arguing that they would "turn back a well-established precept that market participants do not control third parties." If not removed, SIFMA suggested, alternatively, that these provisions impose a ban only when the contribution is made to an ME official with selection influence over

the type of business the solicitor was engaged to solicit.

The MSRB does not believe that the imposition of a two-year ban on a dealer client or municipal advisor client under these provisions as a result of political contributions made by an engaged municipal advisor third-party solicitor (or its MAP or a PAC controlled by either the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor) is inappropriate or onerous. In order to achieve the purposes of the rule, the MSRB believes the two-year ban must be extended to apply to such contributions and has determined not to substantively amend the provision as suggested by SIFMA.

These provisions are narrowly tailored in that they would subject the regulated entity client to a ban on business with a municipal entity only when the regulated entity client engages a municipal advisor third-party solicitor to solicit a municipal entity for business on behalf of the regulated entity. A regulated entity may have a number of means available to help prevent its municipal advisor third-party solicitor from making triggering contributions, including as SIFMA identified, contractual provisions and the training of solicitor personnel. While such actions may not guarantee compliance with the proposed rule change, in such situations, regulated entity clients could possibly avail themselves of an automatic exemption from a ban on business under section (j), as amended by the proposed amendments to Rule G-37. Moreover, if a regulated entity becomes subject to a ban on business in such circumstances, and requests exemptive relief from the relevant agency under proposed Rule G-37(i), the extent to which, prior to the triggering contribution, the regulated entity developed and instituted procedures reasonably designed to ensure compliance with the rule, including procedures designed to ensure the compliance of any engaged municipal advisor third-party solicitor, would be among the factors that would be considered by the agency in determining whether to grant such exemptive relief.

The MSRB understands SIFMA's suggestion that a ban for a regulated entity client should apply only when the municipal advisor third-party solicitor's triggering contribution is made to an ME official with selection influence over the type of business the solicitor was engaged to solicit. However, as with the cross-ban provision, the goal of the municipal advisor third-party solicitor provisions is to address actual quid pro quo corruption or its appearance. Just as non-de minimis contributions from a person associated with a different line of business of a dealer-municipal advisory firm can present an appearance of quid pro quo corruption, so too do the contributions of a party specifically hired to solicit the municipal entity for business on behalf of the dealer-municipal advisor. Similar to the cross-ban, the arising of an appearance of quid pro quo corruption is not dependent on the particular line of business the solicitor was engaged to solicit.

Municipal Advisor Representative

SIFMA suggested that the MSRB narrow the scope of persons that could be a "municipal advisor representative" under draft amended Rule G-37(g)(iii) and thus could

trigger a ban on applicable business or disclosure obligations for a municipal advisor. In SIFMA's view, only an associated person of a municipal advisor that is "primarily engaged" in municipal advisory activities should be a municipal advisor representative. By revising the term "municipal advisor representative" in this manner, SIFMA commented, the term would align with the relevant term for dealers and would move closer to the more narrowly defined group of persons subject to "pay to play" regulation under the IA Pay to Play Rule and the Swap Dealer Rule. SIFMA also commented that there is little risk that the political contributions of persons not "primarily engaged in" municipal advisory activities would create an appearance of quid pro quo corruption.

The MSRB has determined not to narrow the "municipal advisor representative" definition as suggested by SIFMA. Under the proposed rule change, the term "municipal advisor representative" would cross-reference the MSRB's "municipal advisor representative" definition under its municipal advisor professional qualification rules,[133] which itself is based on the scope of the definition of "municipal advisor" in the Dodd-Frank Act[134] and relevant rules and regulations thereunder. Under the SEC Final Rule, "municipal advisor" is to be broadly construed, and is not limited by the standard that a person must be "primarily engaged in" certain activities to be a municipal advisor.[135] Further, in granting authority to the Board to regulate municipal advisors, including regulation with respect to "pay to play" practices, Congress appears to have contemplated that all municipal advisors would be subject to "pay to play" regulation by the Board, regardless of the degree to which they engage in such municipal advisory activities.[136] Moreover, the MSRB's approach under the proposed rule change would create more consistency between defined terms in MSRB rules.

Other Constitutional Issues

Because they relate to an area of First Amendment protection, many commenters

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133 See Rule G-3(d)(i).

134 See 15 U.S.C. 78o-4(e)(4).

135 See generally SEC Final Rule; Order Adopting SEC Final Rule.

136 As explained in the Request for Comment, the regulation of municipal advisors is, as the SEC has recognized, generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, at 67469. "Indeed, Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already 'has an existing, comprehensive set of rules on key issues such as pay-to-play … and that consistency would be important to ensure common standards.'" Request for Comment, at 2 (quoting Senate Report, at 149 (2010)).

on the draft amendments framed their comments in light of their reading of the applicable constitutional standards. In addition to the policy matters discussed above, commenters expressed concerns as to the application of Rule G-37, as amended by the proposed amendments, to "independent expenditures." They also urged the consideration of alternatives to the draft amendments and made various other comments, discussed below.

Independent Expenditures

Callcott and CCP stated that the Board should clarify that "independent expenditures" in support of ME officials are permitted under the proposed amendments to conform to Supreme Court case law.[137]

The MSRB has previously stated in interpretive guidance under Rule G-37 that MFPs are free to, among other things, solicit votes or other assistance for an issuer official so long as the solicitation does not constitute a solicitation of or coordination of contributions for the issuer official.[138] In addition, in upholding the constitutionality of Rule G-37, the Blount court observed that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events."[139] In addition, the proposed amendments, like current Rule G-37, would generally not prohibit contributions to so-called "super PACs" or independent expenditure-only committees.[140] Like current Rule

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137 The Federal Election Commission defines an "independent expenditure" generally as an expenditure "for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." 11 CFR 100.16(a).

138 See Solicitation of Contributions, reprinted in MSRB Rule Book (May 21, 1999).

139 Blount, 61 F.3d at 948; see Reminder of Obligations Under Rule G-37 on Political Contributions and Rule G-27 on Supervision When Sponsoring Meetings and Conferences Involving Issuer Officials, reprinted in MSRB Rule Book (March 26, 2007) at n. 1, quoting Blount, 61 F.3d at 948.

140 However, consistent with current Rule G-37 and related interpretive guidance, regulated entities and their MFPs and MAPs would be prohibited from soliciting others (including affiliates of the regulated entity or any PACs) to make contributions to certain ME officials. Additionally, regulated entities and certain categories of MFPs and MAPs would be prohibited from soliciting others (including affiliates of the regulated entity or any PACs) to make contributions to certain ME officials. Further, contributions by a PAC controlled by the regulated entity or an MFP or MAP of the regulated entity to certain ME officials may

G-37, the proposed rule change would not impose any restriction on "independent expenditures" in support of ME officials.

Alternatives to the Draft Amendments

CCP stated that the MSRB should consider alternatives to the draft amendments, including tougher penalties, stronger investigative tools, whistleblower protections and providing exemptions for municipal advisory contracts that are put out for bid in a transparent way.

The MSRB has determined not to amend the proposed rule change in response to these comments. As part of its normal rulemaking process and consistent with its policy on economic analysis, the MSRB has considered alternatives to the proposed rule change; however, in each case, it determined that these alternatives would likely fail to achieve the same benefits as the proposed rule change or would achieve the same or substantially similar benefits at likely higher cost.[141] The MSRB is sensitive to the constitutional implications of Rule G-37 and believes that the proposed rule change strikes the appropriate balance between protecting constitutional freedoms and addressing quid pro quo corruption and the appearance thereof in the municipal securities market. For example, the MSRB has continued to improve its investigative tools to audit suspected "pay to play" activities involving dealers in the municipal market. However such tools alone would not be sufficient to meet the objectives of the proposed rule change because

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result in a ban on municipal securities business or municipal advisory business with that municipal entity. Furthermore, regulated entities and their MFPs and MAPs would be prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means, including, for example, using an affiliated PAC as a conduit for making a contribution to an ME official. See MSRB Guidance on Dealer-Affiliated Political Action Committees Under Rule G-37 (December 12, 2010).

141 For example, the MSRB considered not requiring a nexus between the influence that may be exercised by an ME official who receives a contribution and the business in which the regulated entity is engaged or is seeking to engage. A broader set of potential ban-triggering events would likely increase costs and may negatively impact competition without significantly improving market integrity or merit-based competition. The MSRB also considered not allowing an orderly transition period for pre-existing non-issue-specific contractual obligations following a ban on business. This alternative would risk imposing significant costs on municipal entities and, because the ban-triggering event would by definition occur after a firm had been selected, does not appear to address the identified needs better than the proposed rule change. The MSRB also considered, but ultimately rejected for the reasons stated herein, modeling the "pay to play" regime for municipal advisors on other "pay to play" regimes in the financial services market in favor of the approach taken in the proposed rule change.

municipal advisors, in their capacity as such, are currently not subject to any "pay to play" rules. Improved tools to uncover quid pro quo corruption are meaningless without legal obligations designed to prohibit such practices. A similar rationale applies with respect to tougher penalties and whistleblower protections. Additionally, while the definition of "municipal securities business" set forth in current Rule G-37(g)(vii) and in proposed Rule G-37(g)(xii) effectively provides the exemptions CCP describes for certain municipal securities business conducted on a competitive bid basis, the MSRB understands that the nature of municipal advisory business does not currently lend itself to a competitive bid process in a manner comparable to which it is conducted for municipal securities business.

Other

Callcott interpreted the draft amendments to Rule G-37 to prohibit contributions to political parties, which would in Callcott's view have caused Rule G-37 to be unconstitutional. The proposed amendments to Rule G-37, like current Rule G-37, would not prohibit the making of political contributions to political parties. Rather, proposed amended section (c) would prohibit the solicitation and coordination of payments to a political party of a state or locality where the regulated entity is engaging or seeking to engage in business. Accordingly, the MSRB has determined not to further amend proposed section (c) in response to this comment.

CCP stated that draft amended section (e), the anti-circumvention provision, is insufficiently tailored under the First Amendment. The MSRB believes that this provision, which would be consistent with similar provisions in other federal "pay to play" regulations, including the IA Pay to Play Rule and the Swap Dealer Rule, would be narrowly tailored to prohibit regulated entities and their MFPs and MAPs from, directly or indirectly, doing any act that would result in a violation of sections (b) or (c) of Rule G-37. Accordingly, the MSRB has determined not to make any changes to section (e) in response to this comment.

CCP stated that a number of other terms or provisions under the draft amendments were vague or unclear. Specifically, CCP indicated that the draft amended MFP definition and draft MAP definition would make Rule G-37 less clear and difficult to determine what constitutes a sufficient "control" relationship for purposes of establishing vicarious liability for several categories of MFPs or MAPs. In addition, CCP expressed a belief that the draft amended definition for the term "solicit" was overly broad and vague because it would be difficult to determine when an "indirect communication" constituted a solicitation. CCP also noted that section (c) under draft amended Rule G-37 was overbroad because it would be difficult to determine whether a dealer or municipal advisor was "seeking" to engage in municipal securities business or municipal advisory business with a municipal entity or in a state or locality.

The MSRB disagrees with each of these assertions. The proposed amendments set forth, for municipal advisors generally, based upon their activities, functions and positions, categories that are analogous and substantially similar to those used to describe

various types of MFPs under the current rule. The proposed amendments to the definition of municipal finance professional are non-substantive (i.e., assigning names to the categories), and, thus would have no impact on an analysis or determination regarding control relationships for purposes of establishing vicarious liability among various MFPs, and, by extension, MAPs. Further, as discussed supra, Rule G-37, including section (c), previously withstood constitutional scrutiny in Blount, and the proposed amendments simply would extend the core of section (c) to municipal advisors. In addition, while the "solicit" definition would be amended under the proposed rule change, the proposed amended definition in subsection (g)(xix) would be consistent with the current definition of "solicit" that it would replace.[142] Both the proposed and current definitions of "solicit" incorporate the "indirect communication" language. Moreover, the MSRB previously issued interpretive guidance regarding the term "solicitation" for purposes of Rule G-37.[143] As discussed supra, the MSRB intends to extend the existing interpretive guidance on Rule G-37 for dealers to municipal advisors on analogous issues. Thus, the MSRB believes at this time that there is sufficient guidance regarding these provisions and terms.

Modification of the Two-Year Ban

Draft amended Rule G-37(b)(i)(E) would provide for a modification of the ending of the two-year ban on applicable business under certain circumstances when business with the municipal entity is ongoing at the time of the triggering contribution. SIFMA stated that this modification should be tailored to apply only to any municipal entity with which a regulated entity is engaged in business at the time of the contribution. SIFMA explained that, according to its reading of the modified two-year ban, in cases where the recipient of a triggering contribution is an ME official of multiple municipal entities, a regulated entity would be prohibited from engaging in applicable business with each municipal entity for the extended period of time, even if the regulated entity was engaged in ongoing business with only one of the municipal entities at the time of the contribution.

To provide additional clarity, the MSRB has amended this provision and consolidated it with the provisions pertaining to the orderly transition period in a single

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142 See discussion of proposed definition of "solicit" in "Municipal Advisor Third-Party Solicitors" and n. 39, supra. The current definition of "solicit," which would be deleted, provides: "Except as used in section (c), the term 'solicit' means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i)." Rule G-37(g)(ix). Rule G-38(b)(i) provides: "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."

143 See MSRB Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38 (June 8, 2006).

paragraph. Under paragraph (b)(i)(E) in the proposed rule change, a triggered ban on applicable business with a given municipal entity will be extended by the duration of the orderly transition period described in proposed Rule G-37(b)(i)(E). The length of a ban on applicable business for one municipal entity with which a regulated entity is banned from engaging in applicable business is unaffected by the length of the ban on applicable business with another municipal entity. This is the case even where the ban on applicable business with both municipal entities stemmed from the same contribution to an ME official with the ability to influence the awarding of business to both municipal entities.[144]

Recordkeeping and Reporting

Duplicate Books and Records

BDA and Sanchez sought clarification as to whether the draft amendments would require dealer-municipal advisors to keep duplicate books and records. BDA specifically expressed concern that the draft amendments would require employees who act as both a municipal advisor and serve as bankers in an underwriter capacity to keep dual records and disclosures. In addition, Sanchez suggested that Rules G-8 and G-9 should be revised to not require separate maintenance of information that is included on Form G-37 and to make clear that the availability of Form G-37 on EMMA would satisfy the maintenance requirement.

The proposed amendments would not require a dealer-municipal advisor to make and keep dual records and disclosures. The MSRB therefore has determined not to amend Rules G-8 and G-9 as suggested by commenters. In addition, as noted in the Request for Comment, dealer-municipal advisors could make all required disclosures on a single Form G-37. Additionally, the proposed amendments to Rules G-8 and G-9 would not prohibit dealer-municipal advisors from making and keeping a single set of the records that would be required under the proposed amendments. Rather, the proposed amendments would provide dealer-municipal advisors with the flexibility to consolidate such records or to keep such records separate as long as they are kept in compliance with all of the terms of Rules G-8 and G-9. If a dealer-municipal advisor were to elect to keep a consolidated set of such records, such records would need to clearly identify whether an MAP or MFP is solely an MAP, solely an MFP, or both.

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144 For example, if a ban triggering contribution is made to an ME official of three municipal entities, and the regulated entity avails itself of an orderly transition period spanning one week for one municipal entity and two weeks for the second municipal entity, but does not avail itself of an orderly transition period for the third municipal entity, its ban with the first municipal entity is extended by one week, its ban with the second municipal entity is extended by two weeks, and its ban with the third municipal entity is not extended.

The MSRB also has determined, at this time, not to further revise Form G-37 and Rules G-8 and G-9 to require the disclosure of much of the information required to be kept under those rules in lieu of separately maintaining such records. Those data are necessary for examiners to examine for compliance with the provisions of Rule G-37 and the MSRB believes that requiring the public disclosure of such information would likely unjustifiably add to, rather than reduce, the compliance burden for regulated entities.

Books and Records When No Contributions Are Made

Castle and WMFS both expressed support for regulation to curb "pay to play" practices, but stated that there should be no books, records or filing requirements for municipal advisors that do not make political contributions. To support this approach, WMFS cited the requirement under the Dodd-Frank Act that the Board not impose an unnecessary burden on small municipal advisors.[145] The Public Interest Groups recommended that the MSRB substantially broaden the recordkeeping that would be required under the proposed amendments to require regulated entities to disclose all political contributions made by any affiliate and to itemize these contributions for comparison to relevant underwritings.

The MSRB believes that the information that would be required to be reported to the Board on Form G-37, even in the absence of any reportable contributions for the applicable reporting period, is important to evaluate compliance with the proposed amended rule and to facilitate public scrutiny of a regulated entity's political contributions (even if made in a different reporting period) and applicable business. The MSRB therefore has determined not to propose the amendments suggested by these commenters. The MSRB believes that the limited nature of the information required to be reported when a regulated entity does not have any reportable contributions and the available relief from any reporting obligations in certain circumstances under the proposed amendments to Rule G-37(e)(ii) sufficiently accommodate small municipal advisors. Similarly, the records that a municipal advisor would be required to make and keep current under the proposed amendments to Rules G-8 and G-9 are necessary to examine municipal advisors for compliance with Rule G-37, as amended by the proposed amendments, and would generally be limited for a municipal advisor that does not make any political contributions. These records would likely also be limited for a small municipal advisor, which necessarily will have fewer MAPs for which it would be required to keep records.

The MSRB seeks to appropriately balance the burden of complying with the proposed rule change's public reporting requirements with the benefit to the public of such disclosure. Moreover, the MSRB is cognizant of the constitutional implications of the proposed rule change, and seeks to narrowly tailor the rule to achieve its stated objectives. At this juncture, the MSRB does not believe that the additional public disclosure suggested by The Public Interest Groups is warranted for the proposed rule

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145 See 15 U.S.C. 78o-4(b)(2)(L)(iv).

change to achieve its objectives.

Paper Submissions

Sanchez suggested that the MSRB should enhance the searchability of Form G-37 submitted to the Board in furtherance of the Board's stated objective to promote public scrutiny of the contributions made by regulated entities. Sanchez also suggested that the MSRB not allow the submission of paper versions of Form G-37.

The MSRB agrees and proposed subsection (e)(iv) of Rule G-37 would require all Form G-37 submissions to be submitted to the Board in electronic form, thereby eliminating the option to submit paper versions of these forms. The MSRB also plans to set forth in the Instructions for Forms G-37, G-37x and G-38t, referenced in subsection (e)(iv) of the proposed amendments to Rule G-37 a requirement that all electronic submissions be in word-searchable portable document format (PDF). All regulated entities have the ability to access the MSRB's electronic submission portal, through which electronic Form G-37 and Form G-37x are submitted. Further, given the significant technological advances since the MSRB first required the submission of Form G-37, the now widespread availability of computers and PDF software, and low percentage of Forms G-37 the MSRB currently receives in paper form, the MSRB believes the burden as a consequence of no longer accepting paper submissions will be relatively low.

Miscellaneous

ACEC expressed the view that the "look-back" in the draft amendments would create a potential conflict with existing employment law which, ACEC stated, does not favorably view asking an applicant questions during the hiring process that are not directly related to the job. In addition, ACEC stated that the MSRB should provide guidance as to what constitutes an indirect contribution to a trade association PAC. Regarding PACs, The Public Interest Groups expressed concern regarding political giving by PACs that may or may not be controlled by a dealer or an MFP of the dealer. It stated that the current disclosure and reporting apparatus does not provide the appropriate deterrent to prevent circumvention of Rule G-37 through the use of PACs.

While the MSRB is sensitive to the fact that regulated entities may be subject to many regulatory schemes, it does not believe that the look-back, which has existed under Rule G-37 for approximately two decades, would be inconsistent with other areas of law. The proposed rule change merely extends this same concept to municipal advisors. Similarly, the MSRB intends to extend the existing interpretive guidance under Rule G-37 for dealers to municipal advisors on analogous issues. The MSRB believes at this time that there is sufficient guidance regarding contributions to and through PACs as well as circumvention of Rule G-37.

WMFS stated that the MSRB should consider prohibiting the making of contributions to bond ballot campaigns. While the MSRB is sensitive to concerns about

bond ballot contributions, the established objective of this rulemaking initiative is to extend the principles embodied in Rule G-37 to municipal advisors, with appropriate modifications to take into account the differences between the regulated entities and the existence of municipal advisor third-party solicitors and dealer-municipal advisors. While bond ballot contributions are not the subject of this initiative, the MSRB continues to review disclosures regarding contributions made to bond ballot campaigns and will separately make any determination whether to engage in further rulemaking in this area.[146]

ACEC requested that the MSRB clarify whether the de minimis exclusion would apply separately to primary and general elections. The Board has previously stated that, if an issuer official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official may contribute up to $250 for the primary election and $250 for the general election to the official.[147] As noted, the MSRB intends all existing interpretive guidance for dealers to apply to the analogous interpretive issues for municipal advisors. Thus, under the proposed rule change, the de minimis exclusion would apply separately to primary and general elections.

ACEC also urged the MSRB to reserve action on the proposed rule change until the Commission has fully clarified the definition of municipal advisory services. The MSRB has determined not to delay this rulemaking initiative. Since July 1, 2014, all municipal advisors, including municipal advisors that are also engineers and do not qualify for an exclusion or exemption under the SEC Final Rule, have been required to comply with the provisions of the SEC Final Rule. They are also subject to a number of

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146 Since February 1, 2010, the MSRB has required disclosure, under Rule G-37, of non-de minimis contributions to bond ballot campaigns made by dealers and certain of their associated persons. In 2013, the MSRB amended Rule G-37 to require the disclosure of additional information related to the contributions made by dealers and certain of their associated persons to bond ballot campaigns and the municipal securities business engaged in by dealers resulting from voter approval of the bond ballot measure to which such contributions relate. The proposed rule change would extend these disclosure provisions to municipal advisors. In connection with the 2013 rulemaking initiative, the MSRB stated that the more detailed disclosures will help inform the Board whether further action regarding bond ballot campaign contributions is warranted, up to and including a corresponding ban on engaging in municipal securities business as a result of certain contributions. See MSRB Notice 2013-09, SEC Approves Amendments to Require the Public Disclosure of Additional Information Related to Dealer Contributions to Bond Ballot Campaigns Under MSRB Rules G-37 and G-8 (April 1, 2013).

147 See MSRB Rule G-37 Interpretive Notice – Application of Rule G-37 to Presidential Campaigns of Issuer Officials (March 23, 1999).

MSRB rules, such as Rule G-17, regarding fair dealing, Rule G-44, regarding supervisory and compliance obligations, and Rule G-3, regarding registration and professional qualification requirements. At this juncture, all municipal advisors should be registered as such, and in compliance with applicable rules. Accordingly, the MSRB has determined not to reserve action on this rulemaking initiative.

Anonymous stated that registered investment advisers that are also municipal advisors should be exempt from the proposed rule change because, in its view, such municipal advisors are already subject to stringent political contribution compliance and recordkeeping requirements. The MSRB has determined not to exempt such municipal advisors from the proposed rule change. As discussed supra, the MSRB is sensitive to the effect of differing regulation for the limited number of dealers and municipal advisors that also operate in the investment advisory market or the swap market. However, the Board does not believe that municipal advisors that also act as investment advisers should be subject to different regulation than their non-investment adviser municipal advisor counterparts.

Lastly, ACEC stated that some commercial entities not primarily in the business of providing advisory services related to municipal securities may, nonetheless, be engaged in activities that are regulated (e.g., engineers). It noted that for the larger among these firms, implementing a compliance regime consistent with the proposed amendments would be challenging and that the MSRB should consider these administrative costs in the context of this rulemaking initiative. As described supra, the MSRB has considered the impact of the proposed rule change on all municipal advisors, including small municipal advisors and municipal advisors that have not previously been subject to federal financial regulation, and continues to believe that the proposed rule change is necessary to address quid pro quo corruption or the appearance thereof in the municipal market.

Economic Analysis

There were no comments received that were specific to the preliminary economic analysis presented in the Request for Comment nor did commenters provide any data to support an improved quantification of benefits and costs of the rule. Comments about the compliance burdens of specific elements of the draft amendments are discussed above.

Implementation Period and Transitional Effect

SIFMA requested an implementation period of no less than six months from the effective date of the proposed rule change.

In response to this comment, the MSRB has revised section (h) of the draft amendments to Rule G-37 to provide that the prohibitions in proposed amended section (b) of Rule G-37 (regarding the ban on business) would only arise from contributions made on or after an effective date to be announced by the MSRB in a regulatory notice published no later than two months following SEC approval of the proposed rule change.

Such effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following SEC approval of the proposed rule change. This lengthening of the implementation period should mitigate compliance costs and provide sufficient time for municipal advisors to identify the MAPs and MFPs that will be subject to the proposed rule change and for dealers and municipal advisors to modify existing, or adopt new, relevant policies or procedures.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2)[148] or Section 19(b)(7)(D)[149] of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervisions Act

Not applicable.

11. Exhibits

Exhibit 1	Completed Notice of Proposed Rule Change for Publication in the Federal Register
Exhibit 2	Notice Requesting Comment and Comment Letters
Exhibit 3	Text of Proposed Amended Forms G-37 and G-37x
Exhibit 5	Text of Proposed Amendments to Rules G-37, G-8 and G-9

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148 15 U.S.C. 78s(b)(2).

149 15 U.S.C. 78s(b)(7)(D).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-MSRB-2015-14)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business, Rule G-8, on Books and Records, Rule G-9, on Preservation of Records, and Forms G-37 and G-37x

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of proposed amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, Rule G-9, on preservation of records, and Forms G-37 and G-37x (the "proposed rule change"). The MSRB requested that the proposed rule change be approved with an effective date to be announced by the MSRB in a regulatory notice published no later than two months following the Commission approval date, which effective date shall be

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1 15 U.S.C. 78s(b)(i).

2 17 CFR 240.19b-4.

no sooner than six months following publication of the regulatory notice and no later than one year following the Commission approval date; provided, however, that any prohibition under Rule G-37 already in effect before the effective date of the proposed rule change shall be of the scope, and continue for the length of time, provided under Rule G-37 as in effect at the time of the contribution that resulted in such prohibition.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") amended Section 15B of the Exchange Act[3] to provide for the regulation by the Commission and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons.[4] The Dodd-Frank Act establishes a federal

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3 15 U.S.C. 78o-4.

4 Pub. Law No. 111-203, 124 Stat. 1376 (2010).

regulatory regime that requires municipal advisors to register with the Commission[5] and prohibits municipal advisors from engaging in any fraudulent, deceptive, or manipulative act or practice.[6] The Dodd-Frank Act also grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities.[7]

As charged by Congress, the MSRB is in the process of developing a comprehensive regulatory framework for municipal advisors and their associated persons, including the proposed amendments to Rule G-37.[8] The proposed rule change would extend to municipal advisors through targeted amendments to Rule G-37 the regulatory policies in Rule G-37 that address "pay to play" practices and the appearance thereof. "Pay to play" practices typically

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5 See Section 15B(a)(1)(B) of the Exchange Act (15 U.S.C. 78o-4(a)(1)(B)).

6 See Section 15B(a)(5) of the Exchange Act (15 U.S.C. 78o-4(a)(5)).

7 See Section 15B(b)(2) of the Exchange Act (15 U.S.C. 78o-4(b)(2)).

8 In furtherance of this framework, the MSRB adopted Rule G-44 regarding the supervisory and compliance obligations of municipal advisors. See Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014) (File No. SR-MSRB-2014-06) (SEC order approving Rule G-44). The MSRB also adopted amendments to Rule G-20, on gifts, gratuities and non-cash compensation, to extend provisions of the rule to municipal advisors and Rule G-3 to establish registration and professional qualification requirements for municipal advisors. See Release No. 34-76381 (November 6, 2015), 80 FR 70271 (November 13, 2015) (File No. SR-MSRB-2015-09) (SEC order approving amendments to Rule G-20 on gifts, gratuities and non-cash compensation); and Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015) (File No. SR-MSRB-2014-08) (SEC order approving registration and professional qualification requirements for municipal advisor representatives and municipal advisor principals) ("Order Approving MA Qualification Requirements"). The MSRB also proposed Rule G-42, regarding duties of non-solicitor municipal advisors. See Release No. 34-74860 (May 4, 2015), 80 FR 26752 (May 8, 2015) (File No. SR-MSRB-2015-03) (notice of filing and request for comment) ("Proposed Rule G-42 Filing"); Release No. 34-75737 (August 19, 2015), 80 FR 51645 (August 25, 2015) (notice of filing of Amendment No. 1 and request for comment); and Release No. 34-76420 (November 10, 2015) 80 FR 71858 (November 17, 2015) (File No. SR-MSRB-2015-03) (notice of filing of Amendment No. 2 and request for comment).

involve a person or an entity making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a quid pro quo for the receipt of government contracts. The proposed rule change would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing an area of potential corruption, or appearance of corruption, in connection with the awarding of municipal advisory business, which impedes a free and open market in municipal securities and may harm investors, issuers, municipal entities and obligated persons.

Such practices among municipal advisors create conflicts of interest and give rise to circumstances suggesting quid pro quo corruption involving public officials of municipal entities resulting from such conflicted interests and the receipt of political contributions. In the worst cases, such practices involve the actual corruption of public officials of municipal entities. Even if actual quid pro quo corruption does not occur, the appearance of quid pro quo corruption in the awarding of municipal advisory business (or municipal securities business or engagements to provide investment advisory services when a municipal advisor solicits on behalf of brokers, dealers or municipal securities dealers ("dealers") or investment advisers) may be as damaging to the integrity of the municipal securities market as actual quid pro quo corruption. Further, the appearance may breed actual quid pro quo corruption as municipal advisors may feel a need to make quid pro quo political contributions in order to be considered a candidate for the award of business that they believe will only be awarded to contributors.[9] Similarly, public officials may

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[9] Rule G-37 was first adopted in the wake of similar dealer concerns in the municipal securities market. See Blount v. SEC, 61 F.3d 938, 945-946 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996) ("Blount") citing Thomas T. Vogel Jr., Politicians Are Mobilizing to Derail Ban on Muni Underwriters, Wall St. J., December 27, 1993, (reporting about some officials rallying support for a boycott of firms that vowed to halt

feel the need to engage in quid pro quo corruption in order to avoid a financial disadvantage to their campaigns as compared to other officials they believe engage in such practices. Even in the absence of actual quid pro quo corruption, the mere appearance of such corruption stifles and creates artificial barriers to competition for municipal advisors that believe that "pay to play" practices are a prerequisite to being awarded municipal advisory business (or municipal securities business or engagements to provide investment advisory services for broker, dealer, municipal securities dealer or investment adviser clients of a municipal advisor soliciting such business on behalf of clients) but are unwilling or unable to engage in such practices.

"Pay to play" practices are rarely explicit: participants typically do not let it be known that contributions or payments are made or accepted for the purpose of influencing the selection of a municipal advisor (or dealer, municipal advisor or investment adviser on behalf of which a municipal advisor acts as a solicitor).[10] Nonetheless, as discussed infra,[11] numerous developments in recent years have led the MSRB to conclude that, at least in some instances, the awarding of municipal advisory business (or municipal securities business or engagements to provide investment advisory services when a municipal advisor solicits on behalf of dealers or

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municipal campaign giving); John M. Doyle, Muni Bond Market Faces Scrutiny Allegations Include Influence Peddling, Cincinnati Post, March 1, 1994 ("Of primary concern to most reformers is the practice of 'pay to play,' the belief that political contributions by firms are necessary to compete for muni bond underwriting business"); John D. Cummins, Blount v. SEC: An End for Pay-to-Play, Bond Buyer, August 21, 1995 (noting that support for "pay to play" reform "grew out of a desire to end the perceived abuses" as well as "individual bankers who were simply tired of writing checks to politicians").

[10] See Blount, 61 F.3d at 945 ("While the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather indirectly…."); id. ("[N]o smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic.").

[11] See infra, nn. 99-102.

investment advisers) has been influenced, or has appeared to have been influenced, by "pay to play" practices.

In the Board's view, continued "pay to play" practices by professionals seeking or engaging in municipal advisory business (including municipal advisors soliciting municipal entities on behalf of dealers, municipal advisors and investment advisers) and the awarding of business by conflicted officials erodes public trust and confidence in the fairness of the municipal securities market, impedes a free and open market in municipal securities, may damage the integrity of the market, and may increase costs borne by municipal entities, issuers, obligated persons and investors. The MSRB believes that extending the policies embodied in Rule G-37 to municipal advisors through targeted amendments to Rule G-37 will help ensure common standards for dealers and municipal advisors, who operate in the same market, and frequently with the same clients.

Rule G-37

In the years preceding the MSRB's adoption of Rule G-37, widespread reports regarding the existence of "pay to play" practices had fueled industry, regulatory and public concerns, calling into question the integrity, fairness, and sound operation of the municipal securities market.[12] When proposing Rule G-37 in 1994, the Board believed, based on the Board's review of comment letters and other information, that there were "numerous instances in which dealers have been awarded municipal securities business based on their political contributions."[13] Moreover, in the Board's view, even when impropriety had not occurred:

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12 See Release No. 34-33868 (April 7, 1994), 59 FR 17621, 17623 (April 13, 1994) (File No. SR-MSRB-94-02) ("Rule G-37 Approval Order").

13 See Release No. 34-33482 (January 14, 1994), 59 FR 3389, 3390 (January 21, 1994) (File No. SR-MSRB-94-02) ("Notice of Proposed Rule G-37").

> political contributions create a potential conflict of interest for issuers, or at the very least the appearance of a conflict, when dealers make contributions to officials responsible for, or capable of influencing the outcome of, the awarding of municipal securities business and then are awarded business by issuers associated with these officials.[14]

The problems associated with "pay to play" practices undermined investor confidence in the municipal securities market, which was essential to the liquidity and capital-raising ability of the market.[15] Further, such practices stifled and created artificial barriers to competition, thereby harming investors and the public interest and increasing market costs associated with the municipal securities business.[16] In light of these concerns, the Board determined that regulatory action was necessary to protect investors and maintain the integrity of the municipal securities market.[17] In approving Rule G-37 in 1994, the Commission affirmed that the rule was adopted "to address the real as well as perceived abuses resulting from 'pay to play' practices in the municipal securities market."[18] The Commission also noted that "[Rule G-37] represents a balanced response to allegations of corruption in the municipal securities market."[19]

Current Rule G-37 is a comprehensive regulatory regime composed of several separate and mutually reinforcing requirements for dealers. Chief among them are: limitations on business activities that are triggered by the making of certain political contributions; limitations on solicitation and coordination of political contributions; and disclosure and recordkeeping

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14 See id. at 3390.

15 See id.

16 See id.

17 See id.

18 See Rule G-37 Approval Order, at 17624.

19 Id. at 17628.

regarding political contributions and municipal securities business.

This regime is widely recognized as having significantly curbed "pay to play" practices and the appearance of such practices in the municipal securities market.[20] Rule G-37 also has been used as a model by various federal regulators to create "pay to play" regulations in other segments of the financial services industry. Pursuant to the Advisers Act,[21] the SEC adopted Rule 206(4)-5 (the "IA Pay to Play Rule"), which applies to investment advisers and political contributions.[22] The Commodity Futures Trading Commission subsequently adopted Rule 23.451, a rule regarding swap dealers and political contributions, (the "Swap Dealer Rule"),[23] pursuant to the Commodity Exchange Act.[24]

Rule G-37 currently applies to dealers in the following respects. Rule G-37(b) prohibits dealers from engaging in municipal securities business with an issuer within two years after a triggering contribution to an official of such issuer is made by: (i) the dealer; (ii) any person who is a municipal finance professional ("MFP") of the dealer; or (iii) any political action committee ("PAC") controlled by either the dealer or any MFP of the dealer (the "ban on municipal

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20 See Release No. IA-3043 (July 1, 2010), 75 FR 41018, at 41020, 41026-41027 (July 14, 2010) (File No. S7-18-09) (SEC order adopting a rule regarding political contributions made by investment advisers pursuant to the Investment Advisers Act of 1940 ("Advisers Act"), ("Order Adopting IA Pay to Play Rule")); id., at n. 101 and accompanying text; comment letter from Sanchez, infra, n. 113; comment letter from SIFMA, infra, n. 113.

21 See 15 U.S.C. 80b-1 et seq.

22 17 CFR 275.206(4)-5.

23 17 CFR 23.451.

24 See Commodity Exchange Act ("CEA"), 7 U.S.C. 1 et seq.

securities business").[25] Under the principal exclusion to the ban on municipal securities business, provided in Rule G-37(b), a contribution will not trigger a ban on municipal securities business if made by an MFP to an official for whom the MFP is entitled to vote, if such contribution, together with any other contributions made by the MFP to the official, do not exceed $250 per election (a "de minimis contribution"). There is no de minimis exclusion for a contribution to an official for whom an MFP is not entitled to vote.

Current Rule G-37(c)(i) prohibits dealers and their MFPs from soliciting or coordinating contributions to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business. Rule G-37(c)(ii) prohibits dealers and certain of their MFPs[26] from soliciting or coordinating payments to a political party of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Rule G-37(d) is an anti-circumvention provision prohibiting dealers and their MFPs from, directly or indirectly, through any person or means, doing any act that would result in a violation of section (b) or (c) of the rule. Rule G-37(e) requires dealers to disclose to the MSRB, for public dissemination, certain information related to their contributions and their municipal securities business.[27]

Currently, Rule G-37 also applies to certain activities of dealers that are now defined as

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25 Hereinafter, a contribution that triggers a ban on municipal securities business, or, as discussed infra, municipal advisory business, or both, is a "triggering contribution."

26 MFPs as described in current paragraphs (A) through (C) of current Rule G-37(g)(iv) are subject to the prohibition in Rule G-37(c)(ii). (Paragraph (A) refers to an associated person primarily engaged in municipal securities representative activities, paragraph (B), to an associated person who solicits municipal securities business, and paragraph (C), to an associated person who is both a municipal securities principal or sales principal and a supervisor of the personnel described in paragraph (A) or (B)).

27 The MSRB makes the information that dealers are required to disclose under Rule G-37(e) available to the public for inspection on the MSRB's Electronic Municipal Market Access (EMMA®) website.

municipal advisory activities under the Exchange Act and Exchange Act Rule 15Ba1-1(e).[28] Specifically, Rule G-37 defines as a type of MFP a person "primarily engaged in municipal securities representative activities" other than sales with natural persons.[29] Such municipal securities representative activities may include the provision of "financial advisory or consultant services for issuers in connection with the issuance of municipal securities."[30] Most, and perhaps all, of these financial advisory and consultant services are also municipal advisory activities under Section 15B(e)(4) of the Exchange Act[31] and the SEC Final Rule. Moreover, currently, under Rule G-37, if a ban on municipal securities business is triggered, the ban encompasses the dealer's provision of those same financial advisory and consultant services. Current Rule G-37 applies equally to dealers that are also municipal advisors ("dealer-municipal advisors"). However, Rule G-37 does not currently apply in any respect to any municipal advisor that is not also a dealer (a "non-dealer municipal advisor.")

Proposed Amendments to Rule G-37

In summary, the proposed amendments to Rule G-37 would extend the core standards under Rule G-37 to municipal advisors by:

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28 17 CFR 240.15Ba1-1(e). See generally, 17 CFR 240.15Ba1-1 to 17 CFR 240.15Ba1-8 and related rules (collectively, "SEC Final Rule") (providing for the registration of municipal advisors); Release No. 34-70462 (September 20, 2013), 78 FR 67467, at 67469 (November 12, 2013) (File No. S7-45-10) ("Order Adopting SEC Final Rule").

29 See Rule G-37(g)(iv)(A).

30 Rule G-3(a)(i)(A)(2); see Rule G-37(g)(iv) (providing that MFP means, under paragraph (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 . . . subparagraph (A)").

31 See 15 U.S.C. 78o-4(e)(4).

- subject to exceptions, prohibiting a municipal advisor from engaging in "municipal advisory business"[32] with a municipal entity for two years following the making of a contribution to certain officials of the municipal entity by the municipal advisor, a "municipal advisor professional"[33] (or "MAP") of the municipal advisor, or a PAC controlled by the municipal advisor or an MAP (a "ban on municipal advisory business");
- prohibiting municipal advisors and MAPs from soliciting contributions, or coordinating contributions, to certain officials of a municipal entity with which the municipal advisor is engaging or seeking to engage in municipal advisory business;
- requiring a "nexus" between a contribution and the ability of the official to influence the awarding of business to the municipal advisor (or the dealer, municipal advisor or investment adviser clients of a defined "municipal advisor third-party solicitor");[34]
- prohibiting municipal advisors and certain MAPs from soliciting payments, or coordinating payments, to political parties of states and localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business;
- prohibiting municipal advisors and MAPs from committing indirect violations of proposed amended Rule G-37;
- requiring quarterly disclosures to the MSRB of certain contributions and related information;

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32 The term "municipal advisory business" is defined in proposed Rule G-37(g)(ix) and discussed infra.

33 The proposed definition of "municipal advisor professional" closely parallels the definition of municipal finance professional in current Rule G-37(g)(iv) and proposed Rule G-37(g)(ii), and is discussed infra.

34 See discussion in "Municipal Advisor Third-Party Solicitors," infra. The new term "municipal advisor third-party solicitor" is defined in proposed Rule G-37(g)(x).

- providing for certain exemptions from a ban on municipal advisory business; and
- extending applicable interpretive guidance under Rule G-37 to municipal advisors.

In addition, subject to exceptions, the proposed amendments would prohibit a dealer or municipal advisor from engaging in municipal securities business or municipal advisory business, as applicable, with a municipal entity for two years following the making of a contribution to certain officials of the municipal entity by a municipal advisor third-party solicitor engaged by the dealer or municipal advisor, an MAP of such municipal advisor third-party solicitor, or a PAC controlled by the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor. The proposed amendments would also subject a dealer-municipal advisor to a "cross-ban" on municipal securities business, municipal advisory business, or both municipal securities business and municipal advisory business, consistent with the type of business the award of which can be influenced by the official to whom the contribution was made.

The discussion of the proposed rule change begins with the proposed amendments to expand the purpose and scope of Rule G-37 as set forth in proposed section (a). This is followed by a discussion of the defined terms "municipal advisor third-party solicitor," "municipal financial professional" and "municipal advisor professional"[35] as an understanding of these defined terms and the treatment under the proposed rule change of persons that fall within these definitions is fundamental to understanding the scope and operation of the subsequent sections of proposed amended Rule G-37. Thereafter, the proposed amendments are discussed in order of the sections of the rule, beginning with a discussion of the proposed amendments to section (b),

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35 See discussion in "Municipal Finance Professionals and Municipal Advisor Professionals," infra. The new term "municipal advisor professional" is defined in proposed Rule G-37(g)(iii).

regarding bans on business.

Purpose Section

Currently, Rule G-37(a) describes the purpose and intent of Rule G-37, which includes the protection of investors and the public interest. It further describes the key mechanisms through which the rule aims to achieve its purposes: (i) a ban on municipal securities business following the making of a triggering contribution to an official of an issuer; and (ii) the public disclosure of information regarding dealers' political contributions and municipal securities business.

The proposed amendments would modify section (a) to include reference to municipal advisory business and reflect that a ban on business and the public disclosure requirements would apply to both dealers and municipal advisors. The proposed amendments also would expand the scope of the purpose to ensure that the high standards and integrity of the "municipal securities market" (instead of the "municipal securities industry") are maintained. In addition, in section (a) and throughout the rule, the proposed defined term "municipal entity"[36] would be

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[36] In proposed Rule G-37(g)(xi), "municipal entity" would have the meaning specified in Section 15B(e)(8) of the Act (15 U.S.C. 78o-4(e)(8)), and the rules and regulations thereunder. The proposed rule change would use this term in lieu of the more narrowly defined term "issuer" in light of the Dodd-Frank Act's grant of authority to the MSRB to adopt rules with respect to municipal advisors and municipal advisory activities for the protection of municipal entities. See supra nn. 3-7 and accompanying text.

Exchange Act Rule 15Ba1-1(g) (17 CFR 240.15Ba1-1(g)) defines "municipal entity" to mean

> any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (1) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) Any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency,

used in lieu of the term "issuer," and, the term "dealer" would be defined to include collectively, for purposes of the rule, brokers, dealers and municipal securities dealers. With these proposed amendments to section (a), the proposed rule change makes clear that proposed amended Rule G-37 is intended to apply to all dealers and all municipal advisors (collectively "regulated entities").

The proposed amendments to section (a) also would add "municipal entities" and "obligated persons"[37] as parties that the rule would be intended to protect, which reflects the scope of the MSRB's broadened statutory charge under the Dodd-Frank Act.[38] Although, by definition, obligated persons are not in that capacity issuers of municipal securities, at times officials who are the recipients of contributions may have influence in the selection of a dealer, municipal advisor or investment adviser in a matter in which an obligated person has financial obligations.

Municipal Advisor Third-Party Solicitors

Municipal advisors that undertake a solicitation of a municipal entity on behalf of a third-

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authority, or instrumentality thereof; and (3) Any other issuer of municipal securities.

"Municipal entity" includes college savings plans ("529 plans") that comply with Section 529 of the Internal Revenue Code (26 U.S.C. 529), and certain entities that do not issue municipal securities, including various types of state or local government-sponsored or established plans or pools of assets, such as local government investment pools ("LGIPs"), public employee retirement systems, public employee benefit plans and public pension plans (including participant directed plans and 403(b) and 457 plans). See SEC Order Adopting Final Rule, at n. 191 (defining "public employee retirement system," "public employee benefit plan," "403(b) plan" and "457 plan"); id., at 78 FR at 67480-83 (discussing these terms).

37 "Obligated person" is defined in Section 15B(e)(10) of the Exchange Act (15 U.S.C. 78o-4(e)(10)) and rules promulgated thereunder. See Exchange Act Rule 15Ba1-1(k) (17 CFR 240.15Ba1-1(k)).

38 See, e.g., 15 U.S.C. 78o-4(b)(2)(C).

party dealer, municipal advisor or investment adviser engage in a distinct type of municipal advisory business. To extend the policies contained in Rule G-37 to these municipal advisors, the proposed amendments to Rule G-37 would add a new defined term, "municipal advisor third-party solicitor" in proposed Rule G-37(g)(x). A municipal advisor third-party solicitor would be defined in proposed Rule G-37(g)(x) as a municipal advisor that:

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

The terms "solicit" and "soliciting"[39] would be defined in proposed Rule G-37(g)(xix) to mean, except for purposes of Rule G-37(c):

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

The terms "municipal advisor third-party solicitor," "solicit" and "soliciting" would be consistent with the terms "municipal advisor"[40] and "solicitation of a municipal entity or obligated person"[41] as defined in the Exchange Act and the rules and regulations thereunder.[42]

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39 The proposed definitions of "solicit" and "soliciting" would be consistent with the term "solicitation of a municipal entity or obligated person" as defined in Section 15B(e)(9) of the Exchange Act (15 U.S.C. 78o-4(e)(9)) and the rules and regulations thereunder. See, e.g., 17 CFR 240.15Ba1-1(n). In addition, the MSRB proposes to move the definition of "solicit" from current Rule G-37(g)(ix) to proposed Rule G-37(g)(xix).

40 See Section 15B(e)(4) of the Exchange Act (15 U.S.C. 78o-4(e)(4)).

41 See Section 15B(e)(9) of the Exchange Act (15 U.S.C. 78o-4(e)(9)).

Under the Exchange Act and the SEC Final Rule, the terms "municipal advisor" and "solicitation of a municipal entity or obligated person" are to be broadly construed, and are reflective of a legislative determination that municipal advisors that act as solicitors on behalf of third-party dealers, municipals advisors or investment advisers should be regulated as such without regard to the extent to which they undertake such solicitations.[43] This includes regulation with regards to "pay to play" practices.[44] Indeed, Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already "has an existing, comprehensive set of rules on key issues such as pay-to-play…."[45]

Thus, a municipal advisor that provides advice to or on behalf of a municipal entity or obligated person within the meaning of Section 15B(e)(4) of the Exchange Act[46] and the rules and regulations thereunder may, depending on its other conduct, also be a municipal advisor third-party solicitor within the meaning of proposed Rule G-37(g)(x). Additionally, a municipal

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42 See Exchange Act Rules 15Ba1-1(d), (e) and (n) (17 CFR 240.15Ba1-1(d), (e) and (n)) (defining the terms "municipal advisor," "municipal advisory activities" and "solicitation of a municipal entity or obligated person," respectively).

43 See Order Adopting SEC Final Rule, 78 at 67477 (noting that "the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors" and that the definition includes "solicitors" that engage in municipal advisory activities). See also id. at n. 411 and accompanying text ("As discussed in the Proposal, a solicitation of a single investment of any amount from a municipal entity would require the person soliciting the municipal entity to register as a municipal advisor.").

44 As the Commission has recognized, the regulation of municipal advisors and their advisory activities is generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, 78 FR at 67469.

45 S. Report 111-176, at 149 (2010) ("Senate Report").

46 15 U.S.C. 78o-4(e)(4).

advisor may at one point in time also be a municipal advisor third-party solicitor and at another point in time may no longer fall within the proposed definition. For example, in one engagement, a municipal advisor's role may be limited to that of a municipal advisor third-party solicitor and the municipal advisor would solicit a municipal entity on behalf of a third-party dealer, municipal advisor or investment adviser. Contemporaneously, in a second engagement, the municipal advisor may be engaged to provide advice to a municipal entity regarding the issuance of municipal securities. Because, under the above example, the municipal advisor falls within the scope of the municipal advisor third-party solicitor definition in connection with at least one solicitation, engagement to solicit or attempt to seek an engagement to solicit, for purposes of the proposed rule change, the municipal advisor would fall within the definition of a municipal advisor third-party solicitor. Under the proposed rule change, the engagement of a municipal advisor third-party solicitor would have special implications for a dealer or municipal advisor (either a dealer or municipal advisor, a "regulated entity") that engages a municipal advisor third-party solicitor ("dealer client" or "municipal advisor client," respectively) to solicit a municipal entity on its behalf.[47]

Municipal Finance Professionals and Municipal Advisor Professionals

Under current Rule G-37, a contribution by a person who is a municipal finance professional, or MFP, of a dealer may trigger a ban on municipal securities business as to the dealer in certain cases. The proposed amendments would incorporate minor non-substantive amendments to the term MFP, and define as a "municipal advisor professional," or MAP, certain persons who are employed or otherwise affiliated with a municipal advisor. Similarly to an MFP,

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47 Hereinafter, a "dealer client" or a "municipal advisor client" may also be referred to as a "regulated entity client."

if an MAP makes a contribution, under the proposed amendments the action may trigger a ban on municipal advisory business as to the municipal advisor in certain cases.

Municipal Finance Professional. An associated person of a dealer is a "municipal finance professional" if he or she engages in the functions described in paragraphs (A) through (E) of current Rule G-37(g)(iv). In addition, if designated by a dealer as an MFP in the dealer's records, an associated person is deemed an MFP and retains the designation for one year after the last activity or position that gave rise to the designation.[48]

The MSRB proposes to more specifically identify the persons engaged in the functions described in current paragraphs (A) through (E) of Rule G-37(g)(iv), and to relocate the defined term, municipal finance professional, from subsection (g)(iv) to proposed subsection (g)(ii) of the rule. A person described in current Rule G-37(g)(iv)(A) would be a "municipal finance representative" in proposed Rule G-37(g)(ii)(A); a person described in current Rule G-37(g)(iv)(B) would be a "dealer solicitor" in proposed Rule G-37(g)(ii)(B); a person described in current Rule G-37(g)(iv)(C) would be a "municipal finance principal" in proposed Rule G-37(g)(ii)(C); a person described in current Rule G-37(g)(iv)(D) would be a "dealer supervisory chain person" in proposed Rule G-37(g)(ii)(D); and a person described in current Rule G-37(g)(iv)(E) would be a "dealer executive officer" in proposed Rule G-37(g)(ii)(E). Additionally, proposed Rule G-37(g)(ii)(B), describing "dealer solicitors" (i.e., associated persons of dealers who solicit municipal securities business), would describe this category of MFP by cross-referencing an additional proposed defined term, "municipal solicitor,"[49] and would delete as

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48 See Rule G-8(a)(xvi) (Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37).

49 In proposed Rule G-37(g)(xiii), "municipal solicitor," would mean:

superfluous the parenthetical reference to Rule G-38, on solicitation of municipal securities business. The proposed rule change would use the proposed descriptive defined terms, in both the definition of "municipal finance professional" and throughout the rule text.

The MSRB also proposes additional minor technical amendments to the definition of MFP to improve its readability. In paragraph (A), defining the term, "municipal finance representative," the MSRB proposes to substitute the words "other than" in place of the more lengthy proviso in the current definition. In paragraph (E), defining the term "dealer executive officer," the MSRB proposes to: (i) relocate the parenthetical pertaining to bank dealers within the definition; and (ii) reorganize the clause that provides that a dealer shall be deemed to have no MFPs if the only associated persons meeting the MFP definition are those described in paragraph (E) (of current Rule G-37(g)(iv) or proposed Rule G-37(g)(ii)). Also, the MSRB proposes minor, non-substantive amendments to shorten the final paragraph of the definition of municipal finance professional, which provides that a person designated by the dealer as an MFP in the dealer's records under Rule G-8(a)(xvi) would be deemed to be an MFP and would retain the designation for one year after the last activity or position which gave rise to the designation. The amendments to the defined term are not intended to, and would not be interpreted to, substantively modify the scope of the current definition of municipal finance professional, except

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

to the extent the defined term "municipal solicitor" used within the "dealer solicitor" definition applies to the solicitation of a "municipal entity," rather than an "issuer."

Municipal Advisor Professionals. The associated persons of a municipal advisor that would be subject to the rule would be defined as "municipal advisor professionals" in proposed Rule G-37(g)(iii). "Municipal advisor professional" would be analogous to the amended defined term, "municipal finance professional." As in the definition of "municipal finance professional," proposed Rule G-37(g)(iii) identifies five types of MAPs, in proposed paragraphs (A) through (E), respectively, as: "municipal advisor representative," "municipal advisor solicitor," "municipal advisor principal," "municipal advisor supervisory chain person," and "municipal advisor executive officer."

Under proposed Rule G-37(g)(iii), an MAP would be any associated person of a municipal advisor engaged in the following activities:

> (A) any "municipal advisor representative" – any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);[50]
>
> (B) any "municipal advisor solicitor" – any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);
>
> (C) any "municipal advisor principal" – any associated person who is

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[50] Rule G-3(d)(i)(A), defines a "municipal advisor representative" as "a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions."

both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i));[51] and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);

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

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

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[51] Rule G-3(e)(i) defines the term "municipal advisor principal" to mean

> a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

See Order Approving MA Qualification Requirements. The term "municipal advisory activities" (which is used within the "municipal advisor principal" definition) is defined in Rule D-13 to mean, except as otherwise specifically provided by rule of the Board, "the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder."

1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

As in the definition of MFP, proposed Rule G-37(g)(iii) defining MAP would provide that a person designated by a municipal advisor as an MAP in the municipal advisor's records would be deemed an MAP and would retain the designation for one year after the last activity or position which gave rise to the designation.

The chart below illustrates the similarities between the defined term, "municipal finance professional," as revised by the proposed amendments, and the new proposed defined term, "municipal advisor professional."

Types of Municipal Finance Professional	Types of Municipal Advisor Professional
"municipal finance representative"	"municipal advisor representative"
"dealer solicitor"	"municipal advisor solicitor"
"municipal finance principal"	"municipal advisor principal"
"dealer supervisory chain person"	"municipal advisor supervisory chain person"
"dealer executive officer"	"municipal advisor executive officer"

Ban on Business

Currently, Rule G-37(b) sets forth a ban on municipal securities business that might have otherwise been awarded as a quid pro quo for a contribution, or at least as to which the appearance of a quid pro quo might have arisen. It prohibits a dealer from engaging in municipal securities business with an issuer within two years after a triggering contribution is made to an issuer official by the dealer, an MFP of the dealer or a PAC controlled by either the dealer or an MFP of the dealer. Proposed Rule G-37(b)(i)(A) would retain this ban on municipal securities

business for dealers. Proposed Rule G-37(b)(i)(B) would create an analogous two-year ban on municipal advisory business applicable to municipal advisors that are not, at the time of the triggering contribution, municipal advisor third-party solicitors. Proposed Rule G-37(b)(i)(C)(1) would create, for municipal advisor third-party solicitors, a two-year ban on municipal advisory business analogous to the ban in proposed Rule G-37(b)(i)(B).

Under the proposed amendments, as discussed infra,[52] whether a contribution would trigger a ban on municipal securities business, a ban on municipal advisory business, or a ban on both types of business (any such ban, a "ban on applicable business") for a dealer, municipal advisor or dealer-municipal advisor generally would depend on the identity of the person who made the contribution, the type of influence that can be exercised by the official to whom the contribution was made and whether an exclusion from the ban would apply.

Persons from Whom Contributions Could Trigger a Ban on Business

Dealers. Under current Rule G-37(b)(i), contributions by three types of contributors — a dealer,[53] an MFP of the dealer[54] or a PAC controlled by either the dealer or an MFP of the dealer[55]— may trigger a ban on municipal securities business for the dealer. The proposed amendments to Rule G-37 would provide that this same set of persons may trigger a ban on business for the dealer, and would renumber this provision as proposed subsection (b)(i)(A).

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52 See discussion in "Persons from Whom Contributions Could Trigger a Ban on Business," "Official of a Municipal Entity," "Ban on Business for Dealers; Ban on Business for Municipal Advisors," "Ban on Business for Dealer-Municipal Advisors" and "Excluded Contributions," infra.

53 See Rule G-37(b)(i)(A).

54 See Rule G-37(b)(i)(B).

55 See Rule G-37(b)(i)(C).

Municipal Advisors that are not Municipal Advisor Third-Party Solicitors. Proposed Rule G-37(b)(i)(B) would set forth, for municipal advisors that are not municipal advisor third-party solicitors at the time of a contribution, a provision that parallels proposed Rule G-37(b)(i)(A) for dealers. Under proposed Rule G-37(b)(i)(B), contributions by three types of contributors — a municipal advisor, an MAP of the municipal advisor or a PAC controlled by either the municipal advisor or an MAP of the municipal advisor — may trigger a ban on municipal advisory business for the municipal advisor.

Municipal Advisor Third-Party Solicitors. Proposed Rule G-37(b)(i)(C)(1) would set forth, for municipal advisor third-party solicitors, a provision that parallels proposed Rule G-37(b)(i)(A) for dealers and proposed Rule G-37(b)(i)(B) for municipal advisors that are not municipal advisor third-party solicitors. Under proposed Rule G-37(b)(i)(C)(1), contributions by three types of contributors — the municipal advisor third-party solicitor, an MAP of the municipal advisor third-party solicitor or a PAC controlled by either the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor — may trigger a ban on municipal advisory business for the municipal advisor third-party solicitor.

Clients of a Municipal Advisor Third-Party Solicitor that are Dealers or Municipal Advisors. Under proposed Rule G-37(b)(i)(C)(2), the engagement of a municipal advisor third-party solicitor would have special implications for a dealer client or municipal advisor client. If a dealer or municipal advisor engages a municipal advisor third-party solicitor to solicit a municipal entity on its behalf, three additional types of contributors may trigger a ban on municipal securities business as to a dealer client, or a ban on municipal advisory business as to a municipal advisor client. Clause (b)(i)(C)(2)(a) would apply to dealer clients of a municipal

advisor third-party solicitor[56] and clause (b)(i)(C)(2)(b) would apply to municipal advisor clients (including municipal advisor third-party solicitor clients) of a municipal advisor third-party solicitor.[57] Under each of the proposed provisions, the additional types of contributors that may trigger a ban for the regulated entity are the same. They are: the engaged municipal advisor third-party solicitor; an MAP of the engaged municipal advisor third-party solicitor; and a PAC controlled by either the engaged municipal advisor third-party solicitor or an MAP of the engaged municipal advisor third-party solicitor. The MSRB believes the risk of actual or apparent quid pro quo corruption is obvious and substantial when a municipal advisor third-party solicitor who is engaged to solicit a municipal entity for business on behalf of a regulated entity client makes a triggering contribution to an official of that municipal entity with the ability to influence the awarding of business to the municipal advisor third-party solicitor's client. For such instances, clauses (b)(i)(C)(2)(a) and (b) are designed to curb actual and apparent quid pro quo corruption involving the regulated entity client and the official to whom the contribution is

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56 Currently, a dealer is generally prohibited under Rule G-38 from making payments to a third-party solicitor to solicit municipal securities business on behalf of the dealer. However, proposed Rule G-37(b)(i)(C)(2)(a) would apply in the limited cases where payments to a third-party solicitor are permitted under Rule G-38 as well as in cases where a dealer engaged a municipal advisor third-party solicitor in violation of Rule G-38.

57 Although municipal advisors that are not dealers are not subject to Rule G-38, municipal advisors that are not municipal advisor third-party solicitors would be subject to proposed Rule G-42, if approved by the Commission. In relevant part, proposed Rule G-42 provides that non-solicitor municipal advisors are prohibited from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities subject to limited exceptions, which include reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities. See Proposed Rule G-42 Filing.

made and to prevent such a regulated entity client from obtaining the benefit of any actual quid pro quo corruption.

The determination of whether a municipal advisor was engaged as a municipal advisor third-party solicitor by a regulated entity client would be determined based on the facts and circumstances.[58] The MSRB would not consider the absence of a writing evidencing the relationship, or the absence of particular terms in a writing evidencing the relationship, to preclude a finding that a municipal advisor third-party solicitor was engaged by a regulated entity to solicit a municipal entity on its behalf within the meaning of proposed Rule G-37(b)(i).[59]

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[58] For example, if the facts and circumstances suggest that On-Site MA, a municipal advisor third-party solicitor, and Best Dealer, a dealer, orally agreed that On-Site MA would solicit Municipal Entity to retain Best Dealer to underwrite municipal securities for Municipal Entity, On-Site MA would be deemed to have been engaged as a municipal advisor third-party solicitor on behalf of Best Dealer with respect to Municipal Entity, even in the absence of a written engagement letter. Similarly, if there was a written engagement letter between On-Site MA and Best Dealer that was limited to soliciting municipal securities business in a major metropolitan city located in a tri-state area, but the facts and circumstances show that Best Dealer actually agreed to engage On-Site MA to solicit municipal securities business from any and all municipal entities in the metropolitan tri-state area, On-Site MA would be deemed to have been engaged as a municipal advisor third-party solicitor on behalf of Best Dealer with respect to the entire metropolitan tri-state area.

[59] But see discussion in "Persons from Whom Contributions Could Trigger a Ban on Business – Municipal Advisor Third-Party Solicitors," supra, and "Municipal Securities Business and Municipal Advisory Business," infra. Under proposed Rule G-37(b)(i)(C)(1), to impose a ban on municipal advisory business for a municipal advisor third-party solicitor, the municipal advisor third-party solicitor does not need to be specifically engaged, at the time of the contribution, to solicit the type of work over which the official to whom the contribution is made has selection influence. Because a municipal advisor third-party solicitor, by definition, may solicit for several different types of business (i.e., municipal securities business, municipal advisory business and investment advisory services), a contribution to any official with the ability to influence the awarding of business to the solicitor's current or prospective dealer, municipal advisor or investment adviser clients could trigger a ban for the municipal advisor third-

Investment Adviser Clients of a Municipal Advisor Third-Party Solicitor. Because Rule G-37 does not apply to investment advisers in their capacity as such, if an investment adviser engages a municipal advisor third-party solicitor to solicit on its behalf for an engagement to provide investment advisory services, the actions of the municipal advisor third-party solicitor would not trigger a ban on business for the investment adviser.[60]

Official of a Municipal Entity

Under current Rule G-37, for any contribution to trigger a ban on applicable business, an additional element -- selection influence -- must be present. A contribution by a dealer, MFP or PAC controlled by either the dealer or an MFP of the dealer can only trigger a ban on municipal securities business for the dealer if the official to whom the contribution was made is an "official of an issuer." As discussed infra, an "official of an issuer" must, in relevant part, have the ability to influence "the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer."[61] Proposed amended Rule G-37 would, as explained below, extend this selection influence element to municipal advisors (and the dealer, municipal advisor and investment adviser clients of municipal advisor third-party solicitors), requiring a nexus between the influence that can be exercised by the "official of a municipal entity" ("ME official") who receives a potentially ban-triggering contribution and the type of business in which the regulated

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party solicitor since there is at least an appearance of quid pro quo corruption when it makes a contribution to such an official. See infra, n. 62.

60 However, investment advisers are subject to the requirements and prohibitions provided in the IA Pay to Play Rule. 17 CFR 275.206(4)-5; see generally, Order Adopting IA Pay to Play Rule.

61 See Rule G-37(g)(vi).

entity is engaged or is seeking to engage.[62]

The term "official of a municipal entity" would be substituted for the current term "official of an issuer" in Rule G-37. The definition of "official of an issuer" (or "official of such issuer") in current Rule G-37(g)(vi) includes any person who, at the time of the contribution, was 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 dealer for

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[62] Dealers and municipal advisors that are not municipal advisor third-party solicitors are typically compensated by the municipal entity or obligated person to whom they are providing advice or municipal securities business. Thus, when a quid pro quo contribution is made by a dealer or such a municipal advisor, the quid is the contribution and the quo is the awarding of business to the dealer or municipal advisor in exchange for the contribution. However, municipal advisor third-party solicitors (in their capacity as such) are typically compensated not by the municipal entity or obligated person they solicit, but by a third-party dealer, municipal advisor or investment adviser for whom they are attempting to secure municipal securities business, municipal advisory business or engagements to provide investment advisory services. When a quid pro quo contribution is made by a municipal advisor third-party solicitor, the quid is the contribution and the quo is typically the awarding of business to the current or prospective clients of the municipal advisor third-party solicitor. Of course, the quo for a municipal advisor third-party solicitor (a type of municipal advisor) could also be the awarding of municipal advisory business to the municipal advisor itself, as a municipal advisor third-party solicitor may simultaneously undertake a solicitation of a municipal entity or obligated person and provide, or seek to provide, to another municipal entity or obligated person certain advice. Thus, for municipal advisor third-party solicitors, the appearance of quid pro quo corruption may arise with respect to a wider range of contributions, as compared to dealers and municipal advisors that are not municipal advisor third-party solicitors. Because municipal advisor third-party solicitors are in the business of attempting to secure business for third-party dealers, municipal advisors and investment advisers, the fact that a municipal advisor third-party solicitor is not, at the time of a contribution, actually engaged to solicit a municipal entity for a particular type of business does not avoid the appearance of quid pro quo corruption. As discussed supra, a municipal advisor third-party solicitor is a municipal advisor that, in relevant part, is currently soliciting, is engaged to solicit, or is seeking to be engaged to solicit a municipal entity for business on behalf of a third-party dealer, municipal advisor or investment adviser. Thus, a municipal advisor third-party solicitor will always stand to gain from a quid pro quo contribution as such a contribution may assist the municipal advisor third-party solicitor in obtaining new business from a prospective dealer, municipal advisor or investment adviser client seeking to curry favor with the ME official to whom the municipal advisor third-party solicitor made the contribution.

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 dealer for municipal securities business by an issuer.

The proposed amendments would delete the term "official of an issuer" from Rule G-37(g)(vi) and substitute the term "official of a municipal entity" as set forth in proposed Rule G-37(g)(xvi). To take into account the possibility that an ME official may have the ability to influence the hiring of a dealer, municipal advisor or investment adviser, or the hiring of two or more of such professionals, three categories of ME officials would be identified in proposed Rule G-37(g)(xvi): an official of a municipal entity with dealer selection influence, as described in proposed paragraph (A), an official of a municipal entity with municipal advisor selection influence, as described in proposed paragraph (B), and an official of a municipal entity with investment adviser selection influence, as described in proposed paragraph (C).

The term "official of a municipal entity with dealer selection influence" would be substantively similar to the "official of an issuer" definition in current Rule G-37(g)(vi), with the exception of the substitution of the term "municipal entity" in place of the term "issuer."[63] However, because the term "municipal entity" used in the "official of a municipal entity with dealer selection influence" definition includes entities beyond those defined as "issuers," the official of a municipal entity with dealer selection influence definition is more expansive than the

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63 In addition, the proposed definition of "official of a municipal entity with dealer selection influence" would include minor technical amendments to the current definition of "official of an issuer" to improve its readability.

"official of an issuer" definition it replaces.[64] The term "official of a municipal entity with municipal advisor selection influence" would be analogous to the "official of a municipal entity with dealer selection influence" definition. In connection with municipal advisor third-party solicitors that solicit on behalf of an investment adviser, the term "official of a municipal entity with investment adviser selection influence" would be analogous to the "official of a municipal entity with dealer selection influence" definition for dealers (and municipal advisor third-party solicitors on behalf of a dealer) and the "official of a municipal entity with municipal advisor selection influence" definition for all municipal advisors. The proposed definition's structure, which includes the three categories of ME officials, provides the flexibility to establish, in the case of a contribution to an ME official, whether there is the required nexus between the ME official who received the contribution (based upon his or her scope of influence) and the awarding of business that gives rise to a sufficient risk of quid pro quo corruption or the appearance of such corruption to warrant a two-year ban.

Municipal Securities Business and Municipal Advisory Business

Currently, under Rule G-37, a dealer subject to a ban is generally prohibited from engaging in "municipal securities business" with the relevant issuer. "Municipal securities business" is currently defined in Rule G-37(g)(vii) as the purchase of a primary offering on other than a competitive bid basis, the offer or sale of a primary offering of municipal securities, providing financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering on other than a competitive bid basis, and providing remarketing agent services

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64 For example, the term "municipal entity" includes certain entities that do not issue municipal securities, including various types of state or local government-sponsored or established plans or pools of assets, such as LGIPs, public employee retirement systems, public employee benefit plans and public pension plans (including participant directed plans and 403(b) and 457 plans). See supra, n. 36.

with respect to a primary offering on other than a competitive bid basis. Under interpretive guidance issued in 1997 (the "1997 Guidance"), the municipal securities business from which a dealer subject to a ban is prohibited from engaging in is "new" municipal securities business. The MSRB has interpreted "new" municipal securities business as contractual obligations with an issuer entered into after the date of the triggering contribution to an official of the issuer and contractual obligations that were entered into prior to the date of the triggering contribution but which are not specific to a particular issue of a security.[65] The latter category that is subject to the ban is referred to as "pre-existing but non-issue specific contractual undertakings."[66] In contrast, pre-existing issue-specific contractual undertakings are generally not deemed "new" municipal securities business, and are not subject to the ban.[67] Interpretive guidance issued in 2002 (the "2002 Guidance") modified the 1997 Guidance in a limited respect to expand the scope of municipal securities business that is not "new" for dealers that serve as primary distributors of municipal fund securities, in light of the unique aspects of municipal fund securities programs and the role that primary distributors play with respect to such programs.

Under the proposed rule change, the definition of municipal securities business would not

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65 See 1997 Guidance.

66 See id. Pre-existing but non-issue-specific contractual undertakings are subject to the ban on municipal securities business, subject to an orderly transition to another entity that is not subject to a ban to perform such business. Id.

67 See id. For example, if a bond purchase agreement was signed prior to the date of a contribution triggering a ban on municipal securities business, a dealer may continue to perform its services as an underwriter on the issue. Significantly, however, new or different services provided under provisions in existing issue-specific contracts that allow for changes in the services provided by the dealer or the compensation paid by the issuer are deemed new municipal securities business. Id. Thus, Rule G-37 precludes a dealer subject to a ban from performing such additional functions or receiving additional compensation.

be amended, except to renumber the definition as proposed subsection (g)(xii) and incorporate conforming changes. Additionally, the 1997 Guidance and the 2002 Guidance would remain unchanged for dealers.

Under proposed Rule G-37(b)(i)(B) and proposed Rule G-37(b)(i)(C)(1), a municipal advisor (including a municipal advisor third-party solicitor) subject to a ban would generally be prohibited from engaging in "municipal advisory business" with the relevant municipal entity. Proposed Rule G-37(g)(ix) would define "municipal advisory business" to mean those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder.[68]

Notably, if a municipal advisor third-party solicitor is subject to a ban under proposed Rule G-37(b)(i)(C), it would be prohibited from engaging in all types of municipal advisory business with the relevant municipal entity, including providing certain advice to the municipal entity and soliciting the municipal entity on behalf of any third-party dealer, municipal advisor or investment adviser.

For municipal advisors, the MSRB intends that all existing interpretive guidance regarding the municipal securities business of dealers under Rule G-37 would apply to the analogous interpretive issues regarding the municipal advisory business of municipal advisors. However, because the "new" versus non-"new" business distinction in the 1997 Guidance only applies to pre-existing issue-specific contractual obligations with an issuer, such guidance would not apply to municipal advisor third-party solicitors as their contractual obligations are not owed to an issuer but to third parties that are regulated entity clients or investment adviser clients.

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68 See proposed Rule G-37(g)(ix).

Further, the 2002 Guidance would not be extended to any municipal advisors to municipal fund securities programs because the 2002 Guidance addressed a non-analogous interpretive issue for dealers.[69] Multiple factors supported the 2002 Guidance regarding primary distributors of municipal fund securities, but the essential factor was the magnitude of the possible repercussions to an issuer of municipal fund securities or investors in municipal fund securities resulting from a sudden change in the primary distributor. For example, issuers would typically not be faced with redesigning existing programs in light of the exit of a municipal advisor to such a plan. Further, the MSRB believes that the exit of a municipal advisor would typically have little or no direct impact on investors, and would not force investors to restructure or establish new relationships with different dealers in order to maintain their investments. The Board does not believe that the disruption of services provided by a municipal advisor to a municipal fund securities plan would result in repercussions of comparable scope or severity to issuers and investors.

Ban on Business for Dealers; Ban on Business for Municipal Advisors

Under the proposed rule change, a dealer or municipal advisor that is not a municipal advisor third-party solicitor could be subject to a ban on applicable business only when a triggering contribution is made to an ME official who can influence the awarding of the type of business in which that regulated entity engages.

A dealer that engages in municipal securities business, but not municipal advisory

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69 Because the 1997 Guidance would not apply to municipal advisor third-party solicitors, the 2002 Guidance (which modifies the 1997 Guidance) would also have no application to municipal advisor third-party solicitors. Thus, municipal advisor third-party solicitors on behalf of third-party dealers, municipal advisors and investment advisers would be prohibited, based on a triggering contribution, from continuing to perform under any pre-existing contract to solicit the relevant municipal entity (whether an issuer of municipal fund securities or any other type of municipal entity).

business, would be subject to a ban on municipal securities business only when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2) to an official of a municipal entity with dealer selection influence, as described in proposed Rule G-37(g)(xvi)(A). (Although the ME official may also have influence as described in proposed Rule G-37(g)(xvi)(B) and (C), regarding the selection of municipal advisors and investment advisers, the broader scope of influence would be irrelevant in determining whether a dealer would be subject to a ban on municipal securities business.)[70] Conversely, a contribution made by any of the persons described in proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2) to an ME official that does not have dealer selection influence (such as an official with only municipal advisor selection influence, or only municipal advisor and investment adviser selection influence) would not trigger a ban for the dealer.

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[70] The following example illustrates the impact of a triggering contribution made by an MAP of a municipal advisor third-party solicitor when the municipal advisor third-party solicitor was engaged by a dealer client as set forth in proposed Rule G-37(b)(i)(C)(2).

Best Dealer is a dealer located in a Midwestern state. On-Site MA is a municipal advisor third-party solicitor located in a western coastal state, State A. Best Dealer engages On-Site MA to solicit three major municipal entities in State A to hire Best Dealer to underwrite municipal bonds, including North City and South City of State A. Dan is an employee and an MAP of On-Site MA. Dan resides in North City. Dan makes a contribution of $240 to an ME official of South City, for whom Dan is not entitled to vote. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers for South City matters. As a result of Dan's $240 contribution to the ME official, Best Dealer, the dealer client of On-Site MA, becomes subject to a ban on engaging in municipal securities business with South City, because Dan's contribution is a triggering contribution and Best Dealer engaged On-Site MA to solicit South City on behalf of Best Dealer. In addition, as discussed infra, On-Site MA would also become subject to a ban on engaging in municipal advisory business with South City.

Although the ME official exercises influence in the selection of municipal advisors and investment advisers, because Best Dealer does not engage in municipal advisory business, a ban on applicable business would subject Best Dealer only to a ban on municipal securities business.

Similarly, a non-dealer municipal advisor that is not a municipal advisor third-party solicitor would be subject to a ban on municipal advisory business only when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(B) or proposed Rule G-37(b)(i)(C)(2) to an ME official that is at least an official of a municipal entity with municipal advisor selection influence.[71]

A non-dealer municipal advisor third-party solicitor would be subject to a ban on municipal advisory business, including advising and soliciting, when a triggering contribution is made by any of the persons described in proposed Rule G-37(b)(i)(C)(1) to any ME official,[72] if

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71 The following example illustrates the impact of a triggering contribution made by an MAP of a municipal advisor third-party solicitor when engaged by a municipal advisor client that is not a municipal advisor third-party solicitor as set forth in proposed Rule G-37(b)(i)(C)(2).

Best MA is a municipal advisor located in a Midwestern state, and is not a municipal advisor third-party solicitor. On-Site MA is a municipal advisor third-party solicitor located in a western coastal state, State A. Best MA engages On-Site MA to solicit the city school districts of three major municipalities in State A to hire Best MA to provide municipal advisory services for such school districts, including North City School District and South City School District. Dan is an employee and an MAP of On-Site MA. Dan resides in North City. Dan makes a contribution of $240 to an official running for re-election to the school board of South City School District. Dan is not entitled to vote for the candidate. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers for South City School District matters. As a result of Dan's $240 contribution to the ME official, Best MA, the client of On-Site MA, becomes subject to a ban on engaging in municipal advisory business with South City School District, because Dan's contribution is a triggering contribution and Best MA engaged On-Site MA to solicit South City School District on behalf of Best MA. Because Best MA does not engage in municipal securities business, a ban on applicable business would subject Best MA only to a ban on municipal advisory business.

In addition, as discussed infra, On-Site MA would also become subject to a ban on engaging in municipal advisory business with South City.

72 The impact of a triggering contribution made by a municipal advisor third-party solicitor (or one of its MAPs, or a PAC controlled by the municipal advisor third-party solicitor or an MAP thereof) to an ME official is illustrated as follows:

investment adviser selection influence.[73]

Best Dealer is a dealer located in a Midwestern state. Best MA is a municipal advisor located in a Midwestern state, and is not a municipal advisor third-party solicitor. Best IA third-party solicitor located in a western coastal state, State A. Best Dealer engages On-Site MA to solicit three major municipal entities in State A, including North City and South City, to hire Best Dealer to underwrite municipal bonds. Best MA engages On-Site MA to solicit the five largest municipal entities in State A, including North City and South City, to hire Best MA to provide municipal advisory services for such entities. Best IA engages On-Site MA to solicit, in State A, all municipalities with populations over 150,000 people, to retain Best IA for investment advice. Dan is an employee and an MAP of On-Site MA, and resides in North City. Dan makes a contribution of $240 to an ME official of South City, for whom Dan is not entitled to vote. The ME official exercises influence in the selection of dealers, municipal advisors and investment advisers, for South City matters.

The consequences for On-Site MA would be as follows: On-Site MA would be banned from the following business with South City: engaging in any form of municipal advisory business with South City (because municipal advisory business is defined to include solicitation on behalf of dealers, municipal advisors and investment advisers AND other municipal advisory functions), including soliciting South City on behalf of any dealer, including Best Dealer, any third-party municipal advisor, including Best MA, and any investment adviser.

The additional consequences of such contribution would be as follows: the dealer client, Best Dealer, would become subject to a ban on engaging in municipal securities business with South City, because Best Dealer engaged On-Site MA to solicit South City on behalf of Best Dealer (and the ME official receiving the contribution had dealer selection influence); and the municipal advisor client, Best MA, would become subject to a ban on engaging in municipal advisory business (of any type) with South City, because Best MA engaged On-Site MA to solicit South City on behalf of Best MA (and the ME official receiving the contribution had municipal advisor selection influence). However, Best IA, who also engaged On-Site MA to solicit South City (a municipality with a population of over 150,000 people), would not be subject to a ban under proposed amended Rule G-37, because although the ME official receiving the contribution had investment adviser selection influence, the proposed rule change does not extend to investment advisers that are not also dealers or municipal advisors. However, as noted supra, Best IA would be subject to the requirements and prohibitions provided in the IA Pay to Play Rule. See discussion in "Investment Adviser Clients of a Municipal Advisor Third-Party Solicitor" and n. 60, supra.

[73] Additionally, a contribution made by any of the persons described in proposed Rule G-37(b)(i)(C)(2) to an official of a municipal entity with municipal advisor selection influence could also trigger a ban for the engaging municipal advisor third-party solicitor

If a municipal advisor does not also engage in municipal securities business, a ban on applicable business under the proposed rule change would subject the municipal advisor only to a ban on municipal advisory business.

Ban on Business for Dealer-Municipal Advisors

The proposed rule change would treat dealer-municipal advisors as a single economic unit and would subject such firms to an appropriately scoped ban on business. The scope of the ban on business would not be dependent on the particular line of business within the dealer-municipal advisor with which the person or PAC that is the contributor may be associated. Instead, the scope of the ban on business would depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made. As a result, a dealer-municipal advisor could be subject, based on a single contribution, to a ban on municipal securities business, a ban on municipal advisory business, or both. Further, any of the following entities or persons might trigger a ban on business for a dealer-municipal advisor if the entity or person makes a contribution that is a triggering contribution in the particular facts and circumstances: the dealer-municipal advisor; an MFP or MAP of the dealer-municipal advisor; a PAC controlled by the dealer-municipal advisor or an MFP or an MAP of the dealer-municipal advisor; a municipal advisor third-party solicitor engaged on behalf of the dealer-municipal advisor; an MAP of such municipal advisor third-party solicitor; or a PAC controlled by either such municipal advisor third-party solicitor or an MAP of such municipal advisor third-party solicitor.

Ban on Applicable Business for Dealer-Municipal Advisors. A dealer-municipal advisor could be subject to a ban on municipal securities business, in its capacity as a dealer, under

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if the engaging municipal advisor third-party solicitor engaged another municipal advisor third-party solicitor under proposed Rule G-37(b)(i)(C)(2)(b).

proposed Rule G-37(b)(i)(A) or proposed Rule G-37(b)(i)(C)(2)(a), under the same terms that apply to other dealers. Similarly, a dealer-municipal advisor that is not a municipal advisor third-party solicitor could, under proposed Rule G-37(b)(i)(B) or proposed Rule G-37(b)(i)(C)(2)(b), be subject to a ban on municipal advisory business under the same terms that apply to non-dealer municipal advisors that are not municipal advisor third-party solicitors. In addition, if a dealer-municipal advisor is a municipal advisor third-party solicitor, under proposed Rule G-37(b)(i)(C), the dealer-municipal advisor could be subject to a ban on municipal advisory business under the same terms that apply to other municipal advisor third-party solicitors.

Cross-Ban. In addition to paragraphs (b)(i)(A), (b)(i)(B) and (b)(i)(C) potentially having application to dealer-municipal advisors, proposed Rule G-37(b)(i)(D) would provide for the imposition of a "cross-ban" for dealer-municipal advisors to address quid pro quo corruption, or the appearance thereof, in two scenarios that arise only for dealer-municipal advisors. The proposed cross-ban would be a ban on business applicable to a line of business within a dealer-municipal advisor as a result of a triggering contribution that emanated from a person or entity associated with the other line of business within the same dealer-municipal advisor. With the provision for a cross-ban, the scope of a ban on business for a dealer-municipal advisor would not be dependent on the particular line of business within the dealer-municipal advisor with which the person or PAC that is the contributor may be associated. Instead, the scope of the ban on business will depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made.

In the first scenario, a contribution is made to an ME official with both dealer and municipal advisor selection influence by a person or entity associated with only one line of business within the dealer-municipal advisor. For example, assume an MFP of the dealer-

municipal advisor who is not also an MAP makes a triggering contribution to an ME official with both dealer and municipal advisor selection influence. Proposed paragraph (b)(i)(D) would subject the dealer-municipal advisor to a ban not only on municipal securities business but also to a cross-ban on municipal advisory business because the contribution is to an ME official who can exercise influence as to the selection of the dealer-municipal advisor in both a dealer and municipal advisor capacity.

In the second scenario, a contribution is made to an ME official with only one type of influence (either dealer selection influence or municipal advisor selection influence, but not both) from a person or entity associated only with the line of business as to which the ME official does not have influence. For example, assume a triggering contribution is made to an official of a municipal entity with only dealer selection influence by an MAP of the dealer-municipal advisor who is not also an MFP. Proposed paragraph (b)(i)(D) would subject the dealer-municipal advisor to a cross-ban on municipal securities business, but not to a ban on municipal advisory business because the ME official is not an official with municipal advisor selection influence.[74] Similarly, if a triggering contribution were made to an official of a municipal entity with only municipal advisor selection influence by an MFP of the dealer-municipal advisor who is not an MAP, the dealer-municipal advisor would be subject to only a ban on municipal advisory business.

The table below shows the most common persons from whom a contribution could trigger a ban on municipal securities business, a ban on municipal advisory business, or both

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[74] Consistently, if a contribution is made by an MAP of a dealer-municipal advisor that is also a municipal advisor third-party solicitor to an ME official with only investment adviser selection influence, the dealer-municipal advisor would be subject to a ban on municipal advisory business, but it would not be subject to a cross-ban on municipal securities business.

under proposed amended Rule G-37.

Persons From Whom a Contribution Could Trigger a Ban on Municipal Securities Business, Municipal Advisory Business, or Both[75]					
Regulated Entity Subject to a Ban	I. Dealer	II. Municipal Advisor That Is Not a Municipal Advisor Third-Party Solicitor	III. Municipal Advisor Third-Party Solicitor (for purposes of this table, "MATP solicitor")	IV. Dealer-Municipal Advisor (for purposes of this table, "the firm")	
Contributor	the dealer	the municipal advisor	the MATP solicitor	the firm	
	an MFP of the dealer	an MAP of the municipal advisor	an MAP of the MATP solicitor	an MFP of the firm	an MAP of the firm
	a PAC controlled by the dealer	a PAC controlled by the municipal advisor	a PAC controlled by the MATP solicitor	a PAC controlled by the firm	
	a PAC controlled by an MFP of the dealer	a PAC controlled by an MAP of the municipal advisor	a PAC controlled by an MAP of the MATP solicitor	a PAC controlled by an MFP of the firm	a PAC controlled by an MAP of the firm
	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the dealer, the entities and persons in column III	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the municipal advisor, the entities and persons in column III	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the MATP solicitor, the entities and persons in this column above	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the firm, the entities and persons in column III	

Orderly Transition Period

As discussed above, under the 1997 Guidance, a dealer that is subject to a ban on municipal securities business with an issuer is prohibited from engaging in new municipal securities business with that issuer, which includes pre-existing but non-issue-specific contractual undertakings. In such cases, to give the issuer the opportunity to receive the benefit of the work already provided and to find a replacement to complete the work performed by the dealer, as needed, the dealer may—notwithstanding the ban on business—continue to perform its pre-existing but non-issue-specific contractual undertakings subject to an orderly transition to

75 This table is for illustrative purposes only. Reference should be made to the proposed amended rule text for complete details.

another entity to perform such business.[76] The interpretive guidance provides that this transition period should be as short a period of time as possible.[77]

Proposed Rule G-37(b)(i)(E) would essentially codify this guidance for dealers and extend it to municipal advisors that are not soliciting the municipal entity with which they become subject to a ban on applicable business. Under this provision, a dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a municipal entity and, during the period of the engagement, becomes subject to a ban on applicable business, may continue to engage in the otherwise prohibited municipal securities business and/or municipal advisory business solely to allow for an orderly transition to another entity and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to its client. This provision, however, would not permit a municipal advisor third-party solicitor to continue soliciting a municipal entity with which it becomes prohibited from engaging in municipal advisory business.[78] Consistent with the 1997 Guidance, the proposed rule change would specifically provide that the transition period must be as short a period of time as possible. In addition, in the event that a dealer or municipal advisor avails itself of the orderly transition period, proposed Rule G-37(b)(i)(E) would extend the ban on business with the municipal entity for which the dealer or municipal advisor utilized the orderly transition period by the duration of the orderly transition period.

For municipal advisors, consistent with the existing interpretive guidance applicable to

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76 See 1997 Guidance.

77 Id.

78 Because any relevant contractual obligations of a municipal advisor third-party solicitor in its capacity as such are owed not to a municipal entity but to third-party regulated entities or investment advisers, the rationale for the orderly transition period would not apply.

dealers, the orderly transition period would apply only with respect to pre-existing but non-issue-specific contractual undertakings owed to municipal entities, which, as discussed above, are included in "new" municipal advisory business and are subject to a ban. For example, if a municipal advisor enters into a long-term contract with a municipal entity for municipal advisory business (e.g., a five-year agreement in which the municipal advisor agrees to provide to the municipal entity advice on a range of matters, including with respect to its reserve policy and the issuance of municipal securities) and a contribution that results in a ban on municipal advisory business is given after such a non-issue-specific contract is entered into, the municipal advisor would be permitted to continue to perform under the contract for as short a period of time as possible to allow for an orderly transition to another municipal advisor. Also, in this example, the ban on municipal advisory business with the municipal entity would be extended by the length of the orderly transition period.

After carefully considering whether to extend the orderly transition period under the interpretive guidance to municipal advisors, the MSRB determined that it is a necessary and appropriate aspect of the regulatory framework governing the municipal market. Significantly, the MSRB believes that certain aspects of proposed amended Rule G-37 would serve as important bulwarks against potential abuse of the orderly transition period. Public disclosure is a critical aspect of Rule G-37 and under the proposed rule change, municipal advisors would be required to disclose (comparable to the current requirements for dealers) to the MSRB information about their political contributions and the municipal advisory business in which they have engaged.[79] The MSRB then would make such disclosures available to the public as well as fellow regulators charged with examining for compliance with and enforcing Rule G-37. In

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[79] See discussion in "Public Disclosure of Contributions and Other Information," infra.

addition, under proposed Rule G-37(d), municipal advisors and their MAPs would (comparable to the current requirements for dealers) be prohibited from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of a ban on business. This anti-circumvention provision, together with the required disclosures, would act to deter and promote detection of potential abuses of the orderly transition period. The MSRB believes that this overall approach strikes the appropriate balance between accommodating the need for municipal advisors to act consistently with their fiduciary duties and the need to address the appearance of, or actual, quid pro quo corruption involving municipal advisors.

Excluded Contributions

Proposed amendments to Rule G-37(b)(ii) would consolidate in one provision the types of contributions that do not currently subject a dealer to a ban on applicable business, and would extend the same exclusions to municipal advisors. The first exclusion is for de minimis contributions, and the second and third exclusions are modifications of the two-year look-back provision that would otherwise apply, as explained below.

De Minimis Contributions. Under current Rule G-37(b)(i), contributions made by an MFP to an issuer official for whom the MFP is entitled to vote will not trigger a ban on municipal securities business if such contributions do not, in total, exceed $250 per election.[80] The proposed amendments to Rule G-37 would retain this exclusion for MFPs of dealers in proposed Rule G-37(b)(ii)(A). Proposed Rule G-37(b)(ii)(A) also would extend this exclusion to

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80 For purposes of the de minimis exclusion, primary elections and general elections are separate elections. Therefore if an official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official may, within the scope of the de minimis exclusion, contribute up to $250 to the official in a primary election and again contribute a separate $250 to the same official in a general election. See MSRB Rule G-37 Interpretive Notice – Application of Rule G-37 to Presidential Campaigns of Issuer Officials (March 23, 1999).

the MAPs of all municipal advisors, including the MAPs of municipal advisor third-party solicitors. If a contribution by an MAP of a municipal advisor third-party solicitor would meet the de minimis exclusion, neither the municipal advisor third-party solicitor nor the dealer client or municipal advisor client for which it was engaged to solicit business would be subject to a ban. In addition, proposed Rule G-37(b)(ii)(A) would incorporate non-substantive changes to the de minimis exclusion in current Rule G-37 to improve the readability of the provision.

Other Excluded Contributions. Currently, under Rule G-37, according to what is known as the "two-year look-back," a dealer is generally subject to a ban on municipal securities business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person, who, although now an MFP of a dealer, was not an MFP of the dealer at the time he or she made the contribution. The proposed rule change would retain the two-year look-back for MFPs[81] and would extend it to the MAPs of municipal advisors that are not municipal advisor third-party solicitors[82] as well as municipal advisors that are municipal advisor third-party solicitors.[83]

Currently, the two-year look-back is modified under Rule G-37 in two situations. Under Rule G-37(b)(ii), contributions to an issuer official by an individual that is an MFP solely based on his or her solicitation activities for the dealer are excluded and do not trigger a ban on municipal securities business for the dealer, unless such MFP (who is so characterized solely based on his or her solicitation activities for the dealer) subsequently solicits municipal securities

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81 See proposed Rule G-37(b)(i)(A).

82 See proposed Rule G-37(b)(i)(B).

83 See proposed Rule G-37(b)(i)(C). The ban on business for the dealer or municipal advisor, like the current treatment under Rule G-37, would only begin when such individual becomes an MFP or MAP of the dealer or municipal advisor, as applicable.

business from the same issuer. The proposed amendments to Rule G-37 would relocate to proposed paragraph (b)(ii)(B) this exclusion applicable to such MFPs ("dealer solicitors" as defined in proposed Rule G-37(g)(ii)(B)) and would extend it to MAPs that perform a similar solicitation function within a municipal advisory firm ("municipal advisor solicitors" as defined in proposed Rule G-37(g)(iii)(B)). To improve the readability of this provision, Rule G-37(b)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by the proposed descriptive terms (discussed above) rather than by cross-reference to the relevant definitions. Lastly, a technical amendment would be incorporated in proposed Rule G-37(b)(ii)(B) to clarify that the non-solicitation condition would not be required to be met for the contribution to be excluded after two years have elapsed since the making of the contribution.

Currently, under Rule G-37(b)(iii), contributions by MFPs who have that status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management committee (i.e., those persons described in paragraphs (C), (D) and (E) of current Rule G-37(g)(iv), the definition of municipal finance professional) are excluded and do not trigger a ban on municipal securities business if such contributions were made more than six months before the contributor obtained (including by designation) his or her MFP status. The proposed amendments to Rule G-37 would relocate to paragraph (b)(ii)(C) this exclusion applicable to such MFPs (i.e., "municipal finance principals," "dealer supervisory chain persons," and "dealer executive officers" as defined in proposed Rule G-37(g)(ii)(C), (D) and (E)) and, similarly, would treat contributions made, under the same circumstances, by the analogous categories of MAPs as excluded contributions. The analogous categories of MAPs would be those MAPs that have MAP status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management

committee (i.e., "municipal advisor principals," "municipal advisor supervisory chain persons," and "municipal advisor executive officers" as defined in proposed Rule G-37(g)(iii)(C), (D) and (E)). To improve the readability of this provision, proposed Rule G-37(b)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by the proposed descriptive terms rather than by cross-references to the relevant definitions.

Prohibition on Soliciting and Coordinating Contributions

Currently, Rule G-37(c)(i) prohibits a dealer and an MFP of the dealer from soliciting any person or PAC to make any contribution or coordinating any contributions to an issuer official with which the dealer is engaging or is seeking to engage in municipal securities business. The proposed amendments to this subsection would retain this prohibition with respect to dealers and their MFPs and would extend the prohibition to municipal advisors and their MAPs. Further, to ensure a relevant nexus exists between the type of business in which a regulated entity engages or seeks to engage and its solicitation or coordination of any contributions to an ME official with the influence to award such business, proposed subsection (c)(i) would be amended to distinguish contributions based on the type of influence held by the ME official.

Thus, under proposed subsection (c)(i), a dealer and an MFP of the dealer would be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with dealer selection influence with which municipal entity the dealer is engaging, or is seeking to engage, in municipal securities business. Similarly, a municipal advisor and an MAP of the municipal advisor would be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with municipal advisor selection influence with which

municipal entity the municipal advisor is engaging, or is seeking to engage, in municipal advisory business. In addition, in light of the nexus that exists between a municipal advisor third-party solicitor's business (to solicit business on behalf of dealers, municipal advisors and investment advisers) and ME officials of every type, the prohibition on soliciting and coordinating contributions would apply, for municipal advisor third-party solicitors, to the solicitation or coordination of contributions to any ME official, if the ME official has municipal advisor selection influence, dealer selection influence or investment adviser selection influence.

Because dealer-municipal advisors engage in both municipal securities business and municipal advisory business, and consistent with the principle that dealer-municipal advisors should be treated as a single economic unit, proposed subsection (c)(i) would not, for dealer-municipal advisors, distinguish a contribution given to an official of a municipal entity with dealer selection influence from one given to an official of a municipal entity with municipal advisor selection influence. Thus, a dealer-municipal advisor, its MFPs, and its MAPs would be prohibited from soliciting any person or PAC to make any contribution or coordinating any contributions to an official of a municipal entity with dealer selection influence or municipal advisor selection influence with which municipal entity the dealer-municipal advisor is engaging or is seeking to engage in municipal securities business or municipal advisory business. If the dealer-municipal advisor is a municipal advisor third-party solicitor, the dealer-municipal advisor and its MAPs would also be prohibited from soliciting or coordinating contributions to an official with investment adviser selection influence.

Currently, Rule G-37(c)(ii) prohibits a dealer and three of the five categories of MFPs as defined, respectively, in current Rule G-37(g)(iv)(A), (B) and (C), from soliciting any person or PAC to make any payment or coordinate any payments to a political party of a state or locality

where the dealer is engaging or seeking to engage in municipal securities business. Proposed amendments to this subsection would retain this prohibition with respect to dealers and these categories of MFPs and would extend the prohibitions to municipal advisors and the three analogous categories of MAPs ("municipal advisor representatives," "municipal advisor solicitors," and "municipal advisor principals," as defined, respectively, in proposed Rule G-37(g)(iii)(A), (B) and (C)). To improve the readability of this provision, Rule G-37(c)(ii), as proposed to be amended, would refer to the relevant MFPs and MAPs by their proposed descriptive terms, rather than by cross-references to the relevant definitions.

Prohibition on Circumvention of Rule

Rule G-37(d) currently prohibits a dealer and any MFP of the dealer from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of the ban on municipal securities business or the prohibition on soliciting or coordinating contributions. Proposed amendments to this section would retain this prohibition with respect to dealers and their MFPs and would extend it to municipal advisors and their MAPs.

Public Disclosure of Contributions and Other Information

Currently, Rule G-37(e) contains broad public disclosure requirements to facilitate enforcement of Rule G-37 and to promote public scrutiny of dealers' political contributions and municipal securities business. Under the provision, dealers are required to disclose publicly on Form G-37 information about certain: (i) contributions to issuer officials; (ii) payments to political parties of states or political subdivisions; (iii) contributions to bond ballot campaigns; and (iv) information regarding municipal securities business with issuers. Currently, Form G-37 may be provided to the Board in paper or electronic form.

The proposed amendments to Rule G-37(e) would retain these disclosure requirements

for dealers, except such requirements would apply to contributions to "officials of municipal entities," which is a potentially broader group of recipients than "officials of an issuer."[84] The disclosure requirements would also apply to municipal securities business with "municipal entities" rather than "issuers." Proposed amendments to Rule G-37(e)(iv), however, would remove the option of making paper, rather than electronic, submissions to the Board.

For municipal advisors, the disclosure requirements of proposed amended Rule G-37(e), would be substantially similar to those for dealers, with one exception for municipal advisor third-party solicitors. The proposed amendments to Rule G-37(e)(i)(C) would require municipal advisor third-party solicitors to list on Form G-37 the names of the third parties on behalf of which they solicited business as well as the nature of the business solicited. The proposed amendments to Rule G-37(e)(iv) would require municipal advisors, like dealers, to submit the required disclosures to the Board in electronic form. The MSRB also proposes to incorporate minor, non-substantive changes to section (e) to improve the readability of the section.

Currently, Rule G-37(f) permits dealers to submit additional voluntary disclosures to the Board. The proposed amendments to Rule G-37(f) would make no change in this respect for dealers and would permit municipal advisors also to make voluntary disclosures.

Definitions

Current Rule G-37(g) sets forth definitions for several terms used in Rule G-37. Proposed amendments to this section (which are not addressed in detail elsewhere in this filing) would add to Rule G-37 new defined terms and would modify existing defined terms in large part to make

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84 The MSRB does not propose to amend the existing disclosure requirements to limit the disclosure of contributions based on the relevant ME official's type of influence. Rather, to further the purposes of the proposed rule change, including permitting the public to scrutinize the political contributions of regulated entities and to address the appearance of quid pro quo corruption, the applicable disclosures would be required for contributions to any type of ME official.

the appropriate provisions of Rule G-37 applicable to municipal advisors and their associated persons. The first new defined term, "regulated entity," in proposed Rule G-37(g)(i), would mean "a dealer or municipal advisor," and the terms "regulated entity," "dealer" and "municipal advisor" would exclude the entity's associated persons. With the addition of the defined term "regulated entity" current Rule G-37(g)(iii), which distinguishes dealers from their associated persons, would be deleted as unnecessary. The definition of "reportable date of selection" would be amended to apply it to municipal advisors, to slightly reorganize the definition and to relocate it from Rule G-37(g)(xi) to proposed Rule G-37(g)(xviii).

Several of the proposed new defined terms for municipal advisors would be analogous to the defined terms applicable to dealers in current Rule G-37. Proposed Rule G-37(g)(xiv) would define the new term "non-MAP executive officer" regarding the executive officers of a municipal advisor in a manner analogous to the term "non-MFP executive officer" applicable to executive officers of dealers under proposed Rule G-37(g)(xv).[85] Also, proposed Rule G-37(g)(iv) would define the new term "bank municipal advisor" in a manner analogous to the current definition of the term "bank dealer" under Rule D-8.[86] The term "municipal advisor"

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85 The current definition of "Non-MFP executive officer" would be relocated from Rule G-37(g)(v) to proposed Rule G-37(g)(xv) and incorporate minor, technical changes to the term (e.g., to update a cross-reference and to replace the phrase "broker, dealer or municipal securities dealer," with "dealer").

86 "Bank municipal advisor" is defined in proposed Rule G-37(g)(iv) to mean:

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

Rule D-8 defines the term "bank dealer" to mean "a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G-1 of the Board."

would be defined based on the definition of the term in the Exchange Act and Commission rules.[87]

The proposed amendments would renumber and relocate a number of definitions in Rule G-37(g) as follows: "bond ballot campaign" would be relocated from subsection (g)(x) to proposed subsection (g)(v); "issuer" would be relocated from subsection (g)(ii) to proposed subsection (g)(vii); "payment" would be relocated from subsection (g)(viii) to proposed subsection (g)(xvii); "municipal securities business" would be relocated from subsection (g)(vii) to proposed subsection (g)(xii); and "contribution" would be relocated from subsection (g)(i) to proposed subsection (g)(vi). With the exception of substituting the term "municipal entity" in place of "issuer" in the definition of the terms "contribution" and "municipal securities business," the proposed amendments to Rule G-37(g) would not substantively amend the definitions of these terms.

Operative Date

Current Rule G-37(h) provides that a ban on business under the rule arises only from contributions made on or after April 25, 1994 (the original effective date of Rule G-37). Proposed amendments to section (h) would provide that a ban on applicable business under the rule would arise only from contributions made on or after an effective date to be announced by the MSRB in a regulatory notice published no later than two months following SEC approval, which effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following SEC approval. However, with respect to dealers and dealer-municipal advisors that are currently subject to the requirements of Rule G-37, any ban on

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87 "Municipal advisor" is defined in proposed Rule G-37(g)(viii) to mean:

> a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder.

municipal securities business that was already triggered before the effective date of the proposed rule change would remain in effect and end according to the provisions of Rule G-37 as in effect at the time of the contribution that triggered the ban.

Exemptions

Rule G-37 currently provides two mechanisms through which a dealer may be exempted from a ban on municipal securities business. First, under current Rule G-37(i), a registered securities association of which a dealer is a member, or another appropriate regulatory agency[88] (collectively, "agency") may, upon application, exempt a dealer from a ban on municipal securities business. In determining whether to grant the exemption, the agency must consider, among other factors:

- whether the exemption is consistent with the public interest, the protection of investors and the purposes of the rule;
- whether, prior to the time a triggering contribution was made, the dealer had developed and instituted procedures reasonably designed to ensure compliance with the rule, and had no actual knowledge of the triggering contribution;
- whether the dealer has taken all available steps to cause the contributor to obtain a return of the triggering contribution(s), and has taken other remedial or preventive measures as appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the triggering contribution

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88 Under MSRB Rule D-14, "[w]ith respect to a broker, dealer, or municipal securities dealer, 'appropriate regulatory agency' has the meaning set forth in Section 3(a)(34) of the Act."

and all employees of the dealer;

- whether, at the time of the triggering contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment;
- the timing and amount of the triggering contribution;
- the nature of the election (e.g., federal, state or local); and
- the contributor's apparent intent or motive in making the triggering contribution, as evidenced by the facts and circumstances surrounding the triggering contribution.[89]

The proposed amendments to section (i) would extend its provisions to municipal advisors, including municipal advisor third-party solicitors, and bans on municipal advisory business, on generally analogous terms. The proposed amendments would provide a process for municipal advisors subject to a ban on municipal advisory business to request exemptive relief from such ban on business from a registered securities association of which is it a member or the Commission, or its designee, for all other municipal advisors. Dealer-municipal advisors seeking exemptive relief from a ban on municipal securities business and a ban on municipal advisory business must, for each type of ban, seek relief from the applicable agency or agencies. With respect to dealers, the proposed amendments to section (i) would also make minor, non-substantive changes to improve its readability.

Under the proposed amendments, in determining whether to grant the requested exemptive relief from a ban on municipal advisory business, the relevant agency would be required to consider the factors, with limited modifications, that currently apply when a request

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89 See Rule G-37(i).

for exemptive relief is made by a dealer. The proposed modifications to the factors are limited to those necessary to reflect their application to both dealers and municipal advisors[90] and to make them otherwise consistent with previously discussed proposed amendments to Rule G-37. Specifically, subsection (i)(i), which currently requires an agency to consider whether the requested exemptive relief would be "consistent with the public interest, the protection of investors and the purposes of" Rule G-37, would be amended to require consideration also of whether such exemptive relief would be consistent with the protection of municipal entities and obligated persons. In addition, as incorporated throughout the proposed amended rule, the term "regulated entity" would be substituted for the deleted phrase, "broker, dealer or municipal securities dealer."

As previously discussed, under the proposed amendments to Rule G-37(b), a contribution made by an MAP of a municipal advisor third-party solicitor soliciting business for a dealer client or a municipal advisor client would subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business. Under the proposed amendments to section (i), if either the municipal advisor third-party solicitor or the regulated entity client desired exemptive relief from the applicable ban on business, the entity that desired relief would be required to separately apply for the exemptive relief and independently satisfy the relevant agency that the application should be granted.

Second, under Rule G-37(j)(i), a dealer currently may avail itself of an automatic exemption (i.e., without the need to apply to an agency) from a ban triggered by its MFP if the

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90 For example, in the case of a municipal advisor, the proposed amendments to Rule G-37(i)(iii) would require an agency to consider whether, at the time of the triggering contribution, the contributor was an MAP, otherwise an employee of the municipal advisor, or was seeking such employment, or was an MAP or otherwise an employee of a municipal advisor third-party solicitor engaged by the municipal advisor, or was seeking such employment.

dealer: discovered the contribution within four months of the date of contribution; the contribution did not exceed $250; and the MFP obtained a return of the contribution within sixty days of the dealer's discovery of the contribution. Rule G-37(j)(ii) currently limits the number of automatic exemptions available to a dealer to no more than two automatic exemptions per twelve-month period. Rule G-37(j)(iii) currently further limits the use of the automatic exemption, providing that a dealer may not execute more than one automatic exemption relating to contributions made by the same person (i.e., an individual MFP) regardless of the time period.

The proposed amendments to section (j) would extend its provisions to all municipal advisors and bans on municipal advisory business. A municipal advisor could avail itself of an automatic exemption from a ban triggered by an MAP of the municipal advisor upon satisfaction of conditions that are the same or analogous[91] to those currently applicable to dealers. Similarly, a dealer-municipal advisor subject to a cross-ban could avail itself of an automatic exemption from a ban on applicable business upon satisfaction of the applicable conditions.[92] In addition, when a contribution made by an MAP of the municipal advisor third-party solicitor soliciting business for a regulated entity client would subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business, each would be allowed to avail itself of an automatic exemption if it separately met the specified conditions. The use of an automatic exemption would count against a regulated entity's allotment (of no more than two automatic exemptions) per twelve-month period, regardless of whether the contribution that

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91 For example, in the case of a municipal advisor pursuing an automatic exemption, the proposed amendments to Rule G-37(j)(i)(C) would require the MAP-contributor to obtain the return of the triggering contribution.

92 A cross-ban would be considered one ban on business. Thus, under section (j)(ii), as proposed to be amended, the execution by a dealer-municipal advisor of the automatic exemptive relief provision to address a cross-ban would be the execution of one exemption.

triggered the ban was made by an MFP or an MAP of that regulated entity or by an MAP of an engaged municipal advisor third-party solicitor.

Proposed Amendments to Rules G-8 and G-9 and Forms G-37 and G-37x

The proposed amendments to Rule G-8 (books and records) and Rule G-9 (preservation of records) would make related changes to those rules based on the proposed amendments to Rule G-37. The proposed amendments to Rule G-8 would add a new paragraph (h)(iii) to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons as currently exist for dealers and their associated persons. With respect to dealers, minor conforming proposed amendments to Rule G-8(a)(xvi) would be incorporated to conform the recordkeeping requirements of the rule to the proposed amendments to Rule G-37 regarding dealers. For example, the proposed rule change would incorporate in Rule G-8(a)(xvi) certain terms added to the definition of municipal finance professional, and the obligation to submit Forms G-37 and G-37x to the Board in electronic form.

The proposed amendments to Rule G-9(h) would generally require municipal advisors to preserve for six years the records required to be made in proposed amended Rule G-8(h)(iii), consistent with the analogous retention requirement in Rule G-9(a) for dealers.

The proposed amendments to Forms G-37 and G-37x would permit the forms to be used by both dealers and municipal advisors to make the disclosures that would be required by proposed amended Rule G-37(e). Dealer-municipal advisors could make all required disclosures on a single Form G-37.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[93] provides that

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93 15 U.S.C. 78o-4(b)(2).

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[94] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. It would address potential "pay to play" practices by municipal advisors involving corruption or the appearance of corruption. Doing so is consistent with the intent of Congress in granting rulemaking jurisdiction over municipal advisors to the MSRB. As the Commission has recognized, the regulation of municipal advisors and their advisory activities is generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices.[95] Indeed, the relevant legislative history indicates that Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already "has an existing, comprehensive set of rules on key issues such as pay-to-

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94 15 U.S.C. 78o-4(b)(2)(C).

95 See Order Adopting SEC Final Rule, 78 FR at 67469, 67475 nn.104-6 and accompanying text (discussing relevant enforcement actions); Senate Report, at 38.

play and . . . that consistency would be important to ensure common standards."[96]

The proposed amendments to Rule G-37 would subject all municipal advisors, including municipal advisor third-party solicitors, to "pay to play" regulation that is consistent with the MSRB's regulation of dealers.[97] Like dealers, municipal advisors that seek to influence the award of business by government officials by making, soliciting or coordinating political contributions to officials can distort and undermine the fairness of the process by which government business is awarded, creating artificial impediments to a free and open market in municipal securities and municipal financial products. These practices can harm obligated persons, municipal entities and their citizens by resulting in inferior services and higher fees, as well as contributing to the violation of the public trust of elected officials who might allow political contributions to influence their decisions regarding public contracting. "Pay to play" practices are rarely explicit: participants do not typically let it be known that contributions or payments are made or accepted for the purpose of influencing the selection of a municipal advisor (or dealer, municipal advisor or investment adviser on behalf of which a municipal advisor acts as a solicitor).[98] Nonetheless, numerous developments in recent years have led the

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96 Senate Report, at 149.

97 Some financial advisory firms that may now be defined as municipal advisory firms are registered as dealers and therefore subject to current Rule G-37. With respect to municipal advisors that are not dealers, as of 2009, approximately fifteen states had some form of "pay to play" prohibition, some of which were broad enough to apply to financial advisory services. Some municipalities also have such rules. In many cases, the limited and patchwork nature of these state and local laws has not been effective in addressing in a comprehensive way the possibility and appearance of "pay to play" practices in the municipal securities market. See Statement of Ronald A. Stack, Chair, MSRB, Before the Senate Committee on Banking, Housing and Urban Affairs (Mar. 26, 2009).

98 See Blount, 61 F.3d at 945 ("While the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather

MSRB to conclude that the selection of market participants that may now be defined as municipal advisors has been influenced by "pay to play" practices and that political contributions as the quid pro quo for the award of valuable financial services contracts have been funneled through third parties that may now be municipal advisor third-party solicitors as defined in the proposed rule change. These include public reports of "pay to play" practices involving the use of persons that may now be defined as municipal advisors,[99] legislative and regulatory statements regarding the activity engaged in by some persons that may now be defined as municipal advisors,[100] market participant comments submitted to the MSRB regarding "pay to play"

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indirectly…."); id. ("[N]o smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic.").

99 See, e.g., Randall Jensen, Some California FAs Use Pay-to-Play Tactics, Critics Say, Bond Buyer, May 24, 2012 (suggesting that some financial advisors may engage in "pay to play" practices in the municipal market and noting that they are not currently subject to "pay to play" regulation); Randall Jensen, Brokers' Gifts That Keep Giving, Bond Buyer, January 13, 2012 (suggesting that the selection of dealers, financial advisors and other professionals in connection with bond ballot initiatives is motivated by "pay to play" practices and noting that financial advisors generally donate more than dealers but are not required to disclose contributions to the MSRB); Mary Williams Walsh, Nationwide Inquiry on Bids for Municipal Bonds, N.Y. Times, January 8, 2009, at A1 (reporting that "pay to play" in the municipal bond market was widespread, and specifically referencing "independent specialists who are supposed to help local governments"); Sarah McBride and Leslie Eaton, Legal Run-Ins Dog the Firm in New Mexico Probe, Wall St. J., January 7, 2009 and Mary Williams Walsh, Bond Advice Leaves Pain in Its Wake, N.Y. Times, February 16, 2009 (both describing potential "pay to play" activity in the municipal securities market engaged in by an "unregulated" adviser); Brad Bumsted, Firm in "Pay to Play" Probe Got $770,000 From State, Pittsburgh Trib. Rev., January 6, 2009 (reporting on the political contributions made by the head of a financial advisory firm and the awarding of a financial advisory contract to that firm in the context of a nationwide inquiry into "pay to play" practices in the municipal bond market); and Lynn Hume, SEC Doing Pay-to-Play Examinations, Bond Buyer, July 1, 2004 (reporting SEC plans to examine a number of financial advisors and broker-dealers to determine if they have engaged in "pay to play" activities in the municipal market).

100 See nn. 95 and 97 and accompanying text. See also Bond Regulators Eye Campaign Contribution Abuses, Reuters, April 10, 2003, available at Westlaw, 4/10/03 Reuters News 20:14:27 (citing Commission, MSRB, and NASD (now FINRA) concerns of

regulation,[101] and a number of enforcement actions involving potential "pay to play" practices and financial advisors or third-party intermediaries that may now be defined as municipal

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continued "pay to play" activity in the market, based on reports involving suspicious conduct engaged in by some market participants, including financial advisors); and SEC Report, at 102 ("[O]ther forms of potentially problematic pay-to-play activities involving commodity trading advisors, municipal advisors, or other municipal securities market participants are not yet directly regulated but raise disclosure issues for investors and the market.").

101 Notice of Filing of Proposed Rule Change Relating to Solicitation of Municipal Securities Business Under MSRB Rule G-38, Release No. 34-51561 (April 15, 2005), 70 FR 20782, at 20785-20786 (April 21, 2005) (File No. SR-MSRB-2005-04) (citing comment letters from Jerry L. Chapman, First Southwest Company, Kirkpatrick, Pettis, Smith, Polian Inc., Merrill Lynch and Morgan Keegan & Company, Inc. and stating "[m]any commentators are concerned that, although the problems associated with pay-to-play in the municipal securities industry are not limited to dealers, only dealers are subject to regulation in this area…They urge the MSRB to coordinate efforts with the Commission, NASD and others to apply pay-to-play limits to financial advisors, derivatives advisors, bond lawyers and other market participants") (internal citations omitted); Notice of Filing of a Proposed Rule Change Relating to Amendments to MSRB Rules G-37 and G-8 and Form G-37, Release No. 34-68872 (February 8, 2013), 78 FR 10656, 10663 (February 14, 2013) (File No. SR-MSRB-2013-01) (summarizing comments from market participants that recommend extending the proposed amendments to Rule G-37 regarding increased disclosure of bond ballot contribution information to municipal advisors); Notice of Filing of Proposed New Rule G-42, on Political Contributions and Prohibitions on Municipal Advisory Activities; Proposed Amendments to Rules G-8, on Books and Records, G-9, on Preservation of Records, and G-37, on Political Contributions and Prohibitions on Municipal Securities Business; Proposed Form G-37/G-42 and Form G-37x/G-42x; and a Proposed Restatement of a Rule G-37 Interpretive Notice, Release No. 34-65255 (September 2, 2011), 76 FR 55976 at 55983 (September 9, 2011) (File No. SR-MSRB-2011-12) (withdrawn) (quoting commenter NAIPFA) ("All too often, we see funds and/or campaign services being contributed to bond campaigns by underwriters [and] financial advisors . . . who end up providing services for the bond transaction work once the election is successful."). From the time that the MSRB first proposed "pay to play" regulation for the municipal securities market, it has received comments from market participants requesting the extension of such regulation to persons that may now be deemed municipal advisors. See Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, Release No. 34-33482 (January 14, 1994), 59 FR 3389, 3402-03 (January 21, 1994) (File No. SR-MSRB-94-02) (summarizing concerns from several commenters that Rule G-37, as initially proposed in 1994, did not apply to certain market participants including third-party solicitors and independent financial advisors).

advisors.[102]

The proposed rule change is expected to aid municipal entities that choose to engage municipal advisors in connection with their issuance of municipal securities as well as transactions in municipal financial products by promoting higher ethical and professional standards of such advisors and helping to ensure that the selection of such municipal advisors is based on merit and not tainted by quid pro quo corruption or the appearance thereof. The MSRB

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102 Financial regulators have brought enforcement actions charging financial advisors with violations of various MSRB fair practice rules in connection with alleged activities that follow or include "pay to play" practices and quid pro quo exchanges. Other enforcement actions are in response to a specific violation of Rule G-37. See, e.g., In re Wheat, First Securities, Inc., SEC Initial Dec. Rel. No. 155 (December 17, 1999) (finding violation of Rule G-17 and Florida fiduciary duty law for financial advisor's false disclosures to municipal entity regarding the use of a third party—who had "[o]ver the years, . . . made hundreds, if not thousands, of political contributions" that "secure[d]" his access to officials—to secure its advisory contract with the county); In re RBC Capital Markets Corp., SEC Release No. 59439 (February 24, 2009) (finding that a financial advisor made advances in violation of Rule G-20 on behalf of a municipal entity client to pay for travel and entertainment expenses unrelated to the bond offering); FINRA Letter of Acceptance, Waiver and Consent No. 2009016275601 (February 8, 2011) (finding that dealer that also engaged in financial advisory activities violated a number of MSRB rules, including engaging in municipal securities business notwithstanding a triggering contribution under Rule G-37, and making payments to unaffiliated individuals for the solicitation of municipal securities business under Rule G-38). Criminal authorities have also brought actions against a former Philadelphia treasurer, municipal securities professionals and a third-party intermediary seeking business on behalf of such municipal securities professionals for their participation in a complex scheme involving "pay to play" practices. See, e.g., Indictment U.S. v. White, et al., No. 04-370 (E.D. Pa. June 29, 2004). In addition, the Commission brought and settled charges against the former treasurer of the State of Connecticut and other parties alleging that engagements to provide investment advisory services were awarded as the quid pro quo for payments made to officials that were funneled through third-party intermediaries. See, e.g., SEC v. Paul J. Silvester, et al., Litigation Release No. 16759 (October 10, 2000); Litigation Release No. 20027 (March 2, 2007); Litigation Release No. 19583 (March 1, 2006); Litigation Release No. 16834 (December 19, 2000). Similar activity in connection with investment advisers seeking to manage the assets of the New York State Common Retirement Fund resulted in guilty pleas to criminal charges and remedial sanctions in parallel administrative orders. See, e.g., SEC v. Henry Morris, et al., Litigation Release No. 22938 (March 10, 2014). For further instances of "pay to play" activity involving third-party intermediaries and solicitors that may now be defined as municipal advisors, see Order Adopting IA Pay to Play Rule, 75 FR at 41019-20.

also believes that, by applying the proposed rule change to municipal advisor third-party solicitors, the proposed rule change will level the playing field upon which dealers and municipal advisors (and the third-party dealer, municipal advisor and investment adviser clients of such solicitors) compete because all such persons would be subject to the same or similar requirements.

These parties play a valuable role in the municipal securities market, in the course of providing financial and related advice or in underwriting the securities. The mere perception of quid pro quo corruption among such professionals may breed actual quid pro quo corruption as municipal advisors, dealers, investment advisers and ME officials alike may feel compelled to take part in "pay to play" practices in order to avoid a competitive disadvantage as compared to similarly situated parties they believe do engage in such practices. The appearance of quid pro quo corruption in the selection of municipal securities professionals also diminishes investor confidence in the ability or willingness of a dealer, municipal advisor or investment adviser to faithfully fulfill its obligations to municipal entities and the investing public. Such apparent quid pro quo corruption also creates artificial impediments to a free and open market as professionals that believe that "pay to play" practices are a prerequisite to the receipt of government business but are unwilling or unable to engage in such practices may be reluctant to enter the market and provide to issuers and investors their honest, and potentially more qualified, services. The proposed rule change is expected to curb such quid pro quo corruption and the appearance thereof.

Further, the disclosure requirements contained in the proposed rule change will serve to give regulators and the market, including investors, transparency regarding the political contributions of municipal advisors and thereby promote market integrity. The combined effect

of the ban on business provisions and the disclosure provisions will serve to reduce the appearance of quid pro quo corruption in the municipal market and enhance the ability of the MSRB and other regulators to detect and deter fraudulent or manipulative acts and practices in connection with the awarding of municipal securities business and municipal advisory business (and engagements to provide investment advisory services to the extent a municipal advisor third-party solicitor is used to obtain or retain such business).

Additionally, upon a finding by the Commission that the proposed rule change imposes at least substantially equivalent restrictions on municipal advisors as the IA Pay to Play Rule imposes on investment advisers and that the proposed rule change is consistent with the objectives of the IA Pay to Play Rule, the proposed rule change would serve as a means to permit investment advisers to continue to pay municipal advisors for the solicitation of investment advisory services on behalf of the investment adviser.[103]

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[103] The IA Pay to Play Rule prohibits an investment adviser and its covered associates from providing or agreeing to provide payment to any person to solicit a government entity for investment advisory services unless the person is, in relevant part, a "regulated person." See 17 CFR 275.206(4)-5(a)(2)(i)(A). A "regulated person" includes a municipal advisor, provided that MSRB rules prohibit such municipal advisors from engaging in distribution or solicitation activities if certain political contributions have been made; and the Commission finds that such rules impose substantially equivalent or more stringent restrictions on municipal advisors as the IA Pay to Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the IA Pay to Play Rule (the "SEC finding of substantial equivalence"). See 17 CFR 275.206(4)-5(f)(9)(iii). The compliance date for the IA Pay to Play Rule's ban on third-party solicitation is July 31, 2015. See Investment Advisers Act Release No. 4129 (June 25, 2015), 80 FR 37538 (July 1, 2015). However, the staff of the SEC's Division of Investment Management has indicated that until the later of (i) the effective date of a FINRA "pay to play" rule that obtains the SEC finding of substantial equivalence or (ii) the effective date of an MSRB "pay to play" rule that obtains the SEC finding of substantial equivalence, it would not recommend enforcement action to the Commission against an investment adviser or its covered associates for violation of the IA Pay to Play Rule's ban on third-party solicitation. See SEC, Staff Responses to Questions About the Pay to Play Rule, at Question I.4, available at https://www.sec.gov/divisions/investment/pay-to-play-faq.htm. The proposed rule change is intended to impose at least substantially equivalent standards

Section 15B(b)(2)(L)(iv) of the Act[104] requires that rules adopted by the Board

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, the MSRB believes it is necessary and appropriate to address "pay to play" practices in the municipal market. The MSRB believes that the approach taken under the proposed rule change (which has for more than two decades applied to dealers of diverse sizes) would appropriately accommodate the diversity of the municipal advisor population, including small municipal advisors and sole proprietorships.

The MSRB recognizes that municipal advisors would incur costs to meet the requirements set forth in the proposed rule change. These costs may include additional compliance and recordkeeping costs associated with initially establishing compliance regimes and ongoing compliance, as well as separate legal and compliance fees associated with the triggering of a ban on applicable business or an application for relief from such a ban. Small municipal advisors, however, will necessarily have fewer personnel whose contributions may trigger disclosure obligations or subject the municipal advisory firm to a ban on applicable business under the proposed rule change. Small municipal advisors can also reasonably be expected to have relatively fewer municipal advisory engagements than larger firms and fewer municipal entities with whom they engage in municipal advisory business. Thus, their

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> on municipal advisors to the standards imposed on investment advisers under the IA Pay to Play Rule for purposes of the SEC finding of substantial equivalence, however, such a finding may be made only by the Commission.

104 15 U.S.C. 78o-4(b)(2)(L)(iv).

compliance costs are likely to be significantly lower than relatively larger municipal advisors.

The MSRB also believes that the proposed amendments to Rule G-37(i) regarding application for an exemption from a ban on applicable business and proposed amendments to Rule G-37(j) regarding the automatic exemption from a ban on applicable business provide significant relief to all municipal advisors, including small municipal advisors, from the consequences of an inadvertent triggering contribution. In particular, the automatic exemption provision would provide a regulated entity relief from a ban on applicable business without the need to resort to a formal application for an exemption, which may involve the use of outside legal counsel or compliance professionals.

Additionally, because small municipal advisors can be reasonably expected to employ fewer personnel and/or have fewer engagements, they are likely to have less information to report to the MSRB under the proposed rule change. Further, municipal advisors that meet the standards to file a Form G-37x in lieu of a Form G-37 may avail themselves of relief from all other reporting obligations as long as they continue to meet those standards. Thus, the MSRB believes that the proposed rule change is consistent with the Dodd-Frank Act's provision with respect to burdens that may be imposed on small municipal advisors.

Finally, the MSRB believes that the proposed rule change will allow small municipal advisors to compete based on merit rather than their ability or willingness to make political contributions, which may be a significant benefit relative to the status quo.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[105] which provides that the MSRB's rules shall

prescribe records to be made and kept by municipal securities brokers, municipal

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105 15 U.S.C. 78o-4(b)(2)(G).

> securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would require, under proposed amendments to Rule G-8, that a municipal advisor make and keep certain records concerning political contributions and the municipal advisory business in which the municipal advisor engages. Proposed amendments to Rule G-9 would require that these records be preserved for a period of at least six years. The MSRB believes that the proposed amendments to Rules G-8 and G-9 related to recordkeeping and records preservation will promote compliance and facilitate enforcement of the proposed amendments to Rule G-37.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[106] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act provides that MSRB rules may

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[107]

The Board's Policy on the Use of Economic Analysis in Rulemaking, according to its transitional terms, does not apply to the Board's consideration of the proposed rule change, as the rulemaking process for the proposed rule change began prior to the adoption of the policy. However, the policy can still be used to guide the consideration of the proposed rule change's burden on competition. The MSRB also considered other economic impacts of the proposed rule

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106 15 U.S.C. 78o-4(b)(2)(C).

107 15 U.S.C. 78o-4(b)(2)(L)(iv).

change and has addressed any comments relevant to these impacts in other sections of this filing.

The Board has evaluated the potential impacts of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB does not believe that the proposed rule change will impose any additional burdens, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the MSRB believes that the proposed rule change is likely to increase fair competition.

"Pay to play" practices may interfere with the process by which municipal advisors or the third-party clients of a municipal advisor third-party solicitor are chosen since the receipt of contributions made by such persons might influence an ME official to award business based, not on merit, but on the contributions received. "Pay to play" practices may also raise artificial barriers to entry and detract from fair competition among municipal advisors and the third-party clients of municipal advisor third-party solicitors.[108]

The MSRB believes that the proposed rule change will make it more likely that municipal advisors (and the third-party clients of a municipal advisor third-party solicitor) will be selected based on merit and cost, rather than on contributions to political officials. By serving to level the playing field upon which municipal advisors compete for business and solicit business for others, the proposed rule change will help curb manipulation of the market for municipal advisory services (and municipal securities business and investment advisory services, to the extent a municipal advisor third-party solicitor is used to obtain or retain such business). Municipal entities are, in turn, more likely to receive higher-quality advice and lower costs in procuring

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108 Because of the illicit nature of the activity, quantifying the extent of quid pro quo corruption is difficult. In its order providing for the registration of municipal advisors, however, the Commission noted that the new municipal advisor registration and regulatory regime is intended to mitigate some of the problems observed with the conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, 78 FR at 67469.

such business and services.

As noted by the SEC in the IA Pay to Play Approval Order, the efficient allocation of advisory business may be enhanced when it is awarded to investment advisers that compete on the basis of price, quality of performance and service and not on the influence of political contributions.[109] It is a similar case with the awarding of municipal advisory business to municipal advisors and municipal securities business to dealers. The SEC also noted in the same approval order that investment advisory firms, and particularly smaller investment advisory firms, will be able to compete based on merit rather than their ability or willingness to make political contributions.[110] The SEC's reasoning is equally applicable to the potential impact on municipal advisors and dealers of the proposed rule change. A merit-based process is likely to result in a more efficient allocation of professional engagements, compared to the baseline state.

In addition, the proposed rule change subjects municipal advisory activities to a regulatory regime comparable to the regulatory regimes for other entities and persons in the financial services industry, in particular those such as dealers or investment advisers who provide services to municipal entities and are subject to existing "pay to play" rules including Rule G-37 and the IA Pay to Play Rule, respectively.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape. The MSRB recognizes that the compliance, supervisory and recordkeeping requirements associated with the proposed rule change may impose costs and that those costs may disproportionately affect municipal advisors that are not also broker-dealers or that have not otherwise previously been regulated in this area.

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109 See Order Adopting IA Pay to Play Rule, at 41053.

110 See id.

During the comment period, the MSRB sought information that would support quantitative estimates of these costs, but did not receive any relevant data.

The MSRB believes that the SEC estimates of the costs associated with implementing the IA Pay to Play Rule may provide a guide to the initial, one-time costs that previously unregulated municipal advisors might incur under the proposed rule change. Because even the largest municipal advisory firms are generally smaller than large investment advisory firms, however, the MSRB believes the costs of compliance associated with the proposed rule change will be lower than those associated with the IA Pay to Play Rule.

The MSRB also recognizes that the proposed rule change may cause some firms—either because they have engaged in competition primarily on the basis of political contributions or because of the costs of compliance—to exit the market. Some municipal advisors may consolidate with other municipal advisors in order to benefit from economies of scale (e.g., by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the proposed rule change. While this might reduce the number of firms competing for business, consolidated firms might compete more effectively on price, which would offer benefits to municipal entities. Some firms wishing to enter the market may find the costs of compliance create barriers to entry. Finally, some dealer-municipal advisors may separate and form dealer-only and municipal advisor-only firms to avoid the "cross-ban." If separations result in lost efficiencies of scope, such firms may compete less effectively on price – potentially raising issuance costs, but the presence of such firms also may potentially foster greater competition, particularly among smaller firms.

The MSRB recognizes that small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the

requirements of the proposed rule change may be proportionally higher for these smaller firms, potentially leading to exit from the industry or consolidation. However, as the SEC recognized in its Order Adopting SEC Final Rule, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors) or the consolidation of municipal advisors.[111]

The MSRB also believes that the proposed amendments to Rule G-37(i) regarding application for an exemption from a ban on applicable business and proposed amendments to Rule G-37(j) regarding the automatic exemption from a ban on applicable business provide significant relief to all municipal advisors, including small municipal advisors, from the consequences of an inadvertent triggering contribution. In particular, the automatic exemption provision would provide a regulated entity relief from a ban on applicable business without the need to resort to a formal application for an exemption, which may involve the use of outside legal counsel or compliance professionals.

Overall, the MSRB believes that the proposed rule will not, on its own, significantly change the number or concentration of firms offering municipal advisory services and that the increased focus on merit and cost will result in a more competitive market.

The MSRB solicited comment on the potential burdens of the draft amendments to Rules G-37, G-8 and G-9 in a notice requesting comment, which notice incorporated the MSRB's preliminary economic analysis.[112] The specific comments and the MSRB's responses thereto are discussed in Section C.

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111 See Order Adopting SEC Final Rule, at 67608.

112 MSRB Notice 2014-15, Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors (August 18, 2014) ("Request for Comment").

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB received thirteen comment letters in response to the Request for Comment.[113] The comment letters are summarized below by topic and the MSRB's responses are provided.

Support for the Proposed Rule Change

Most commenters supported to some degree the initiative to extend the policies contained in Rule G-37 to municipal advisors. The Public Interest Groups stated that, by recognizing that municipal advisors may play a key role in underwriting and other municipal funding decisions, the MSRB's expansion of the scope of the rule will help promote the integrity of the contracting process. BDA supported the objective of the draft amendments on the grounds that it would create a level playing field between dealers and municipal advisors. SIFMA maintained that it is important that all market participants are subject to the same rules applicable to political activity, and that the draft amendments significantly advance that interest. NAIPFA supported the draft amendments without qualification. Sanchez noted the draft amendments would address practices

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113 Comments were received from American Council of Engineering Companies: Letter from David A. Raymond, President & CEO, dated October 1, 2014 ("ACEC"); Anonymous Attorney: Email from Anonymous, dated October 1, 2014 ("Anonymous"); Bond Dealers of America: Letters from Michael Nicholas, Chief Executive Officer, dated October 1, 2014 ("First BDA") and October 8, 2014 ("Second BDA") (together, "BDA"); Caplin & Drysdale, Chtd.: Letter from Trevor Potter and Matthew T. Sanderson, dated September 30, 2014 ("C&D"); Castle Advisory Company LLC: Email from Stephen Schulz, dated August 18, 2014 ("Castle"); Center for Competitive Politics: Letter from Allen Dickerson, Legal Director, dated October 1, 2014 ("CCP"); Dave A. Sanchez: Letter from Dave A. Sanchez, dated November 5, 2014 ("Sanchez"); Hardy Callcott: Email from Hardy Callcott, dated September 9, 2014 ("Callcott"); National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated October 1, 2014 ("NAIPFA"); Public Citizen, et al.: Letter from Bartlett Naylor, Financial Policy Advocate, et al., dated October 1, 2014 ("The Public Interest Groups"); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 30, 2014 ("SIFMA"); and WM Financial Strategies: Letter from Joy A. Howard, Principal, dated October 1, 2014 ("WMFS").

that create artificial barriers to competition.

Several commenters expressed support for specific provisions in the draft amendments. The Public Interest Groups and CCP supported replacing the term "official of an issuer" with the new defined term "official of a municipal entity." CCP further supported the draft amendments' creation of different categories of "officials of a municipal entity." SIFMA and CCP both expressed support for the purpose for which these categories were created—namely, to ensure that there is a nexus between a contribution and the awarding of business that gives rise to a sufficient risk of corruption, or the appearance thereof, to warrant a ban on applicable business.

De Minimis Contributions

Under draft amended Rule G-37(b)(ii)(A), contributions made by an MFP or MAP to an ME official for whom the MFP or MAP is entitled to vote would be de minimis and would not trigger a ban on municipal securities business or municipal advisory business if such contributions made by such MFP or MAP do not, in total, exceed $250 per election. Five commenters said that the MSRB should harmonize this de minimis exclusion with those set forth for investment advisers under the IA Pay to Play Rule,[114] and two of these five commenters said that the de minimis exclusion should be harmonized with those set forth for swap dealers under the Swap Dealer Rule.[115] As described below, however, the comments differed with regard to the extent of harmonization suggested and the offered rationale for harmonization. Two additional commenters opposed any modification to the de minimis exclusion.[116]

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114 See 17 CFR 275.206(4)-5.

115 See 17 CFR 23.451. BDA, C&D, CCP, Callcott and SIFMA proposed harmonization with the IA Pay to Play Rule. BDA and SIFMA also proposed harmonization with the Swap Dealer Rule.

116 NAIPFA and Sanchez opposed modification to the de minimis exclusion.

Raising the Threshold for the Existing De Minimis Exclusion

The five commenters that supported greater harmonization agreed that Rule G-37 should be modified to raise the threshold from $250 to $350 for the existing de minimis exclusion under draft amended Rule G-37(b)(ii).

SIFMA, BDA and C&D supported a $350 de minimis threshold principally on the basis of promoting more efficient administration of federal "pay to play" programs and reducing the compliance burdens on those regulated entities that are also subject to the IA Pay to Play Rule and the Swap Dealer Rule[117]—both of which have a de minimis threshold of $350 for a contribution to an official for whom the contributor is entitled to vote.[118] SIFMA expressed the view that both the $250 de minimis threshold in Rule G-37 as well as the $350 de minimis threshold utilized in the IA Pay to Play Rule[119] appear to be somewhat arbitrary. However, it argued, to the extent a de minimis amount is exempted, it should be uniform across the federal "pay to play" regimes. In contrast, NAIPFA expressed unqualified support for the draft amendments and specifically opposed any increase in the de minimis threshold of $250. Sanchez also opposed any change to the de minimis threshold, commenting that Rule G-37 has been an important tool in enhancing free and fair competition and that a change in the de minimis threshold would provide a distinct and unfair advantage to large financial services firms over smaller firms.

CCP and Callcott framed their arguments for a $350 de minimis threshold based on First

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117 C&D also noted that a $350 threshold would partly account for the effects of inflation since the Board first established $250 as the threshold in 1994.

118 See 17 CFR 275.206(4)-5(b)(1); see also 17 CFR 23.451(b)(2)(i)(A).

119 See id.

Amendment concerns. Because the IA Pay to Play Rule[120] appeared to embody a determination that a de minimis threshold of $350 was sufficient to prevent quid pro quo corruption, or the appearance thereof, they suggested the MSRB's proposed $250 de minimis threshold could not be "narrowly tailored to achieve a compelling government interest." While CCP was skeptical as to whether the de minimis thresholds under the IA Pay to Play Rule are consistent with constitutional requirements, it expressed concern that the MSRB did not articulate why these thresholds are not sufficient for purposes of Rule G-37. Callcott argued that, although Rule G-37's $250 de minimis threshold was upheld by the D.C. Circuit in Blount[121] in 1995, the rule cannot continue to withstand constitutional scrutiny in the wake of the IA Pay to Play Rule[122] and Supreme Court cases decided since Blount, including McCutcheon v. FEC.[123] In contrast, Sanchez stated that unlike some of the recent Supreme Court rulings on political contributions, Rule G-37 is narrowly tailored to only affect persons who seek specific types of business with municipal entities and not citizens at large.

The MSRB is sensitive to the effect of differing "pay to play" de minimis thresholds for dealers and municipal advisors that also operate in the investment advisory market or the swap market. However, the Board believes that, to the extent possible and appropriate, consistency between the regulatory treatment of dealers and municipal advisors, who operate in the same market and typically with the same clients, is vital to curb quid pro quo corruption or the appearance thereof in the municipal market. Dealers have been subject to the requirements of

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120 Id.

121 Blount v. SEC, 61 F.3d 938 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996).

122 See 17 CFR 275.206(4)-5.

123 McCutcheon v. FEC, 572 U.S. ___, 134 S. Ct. 1434 (2014) ("McCutcheon").

Rule G-37 for more than two decades, and as commenters have noted, its terms, including its de minimis threshold, have been effective in combating corruption or the appearance of corruption in connection with the awarding of municipal securities business to dealers.[124]

Moreover, as acknowledged by several of the commenters, in Blount, the D.C. Circuit previously determined that Rule G-37 was constitutional on the ground that the rule was narrowly tailored to serve a compelling government interest.[125] The court found the interest in protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be compelling.[126] The MSRB does not believe that differing de minimis threshold determinations for other markets precludes a determination that the MSRB's de minimis threshold for the municipal market is narrowly tailored. The MSRB also believes that commenter references to recent Supreme Court decisions are misplaced. Those cases, for example, did not address regulations aimed at preventing quid pro quo corruption or the appearance thereof with respect to individuals engaged in securities-related business with municipal entities, or even regulations regarding individuals engaged in business with a governmental entity more generally. Additionally, recent jurisprudence relating to political contributions and government contractors implicitly contradicts the notion that Blount does not survive McCutcheon. Wagner, et al., v. FEC,[127] decided en banc by the U.S. Court of Appeals for the District of Columbia Circuit after McCutcheon, unanimously upheld a provision in the Federal Election Campaign Act that prohibits contributions made in connection with federal elections by federal government

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124 See comment letter from Sanchez; comment letter from SIFMA.

125 See Blount, 61 F.3d at 944, 947-48.

126 See id. at 944.

127 793 F.3d 1 (D.C. Cir. 2015) (en banc) ("Wagner").

contractors. In upholding the provision, the Wagner court repeatedly cited Blount with approval, noting that it upheld Rule G-37 against First Amendment challenge[128] and that it found Rule G-37 to be "'closely drawn,' in part because it 'restrict[ed] a narrow range of … activities for a relatively short period of time,' and those subject to the rule were 'not in any way restricted from engaging in the vast majority of political activities.'"[129] Accordingly, the MSRB has determined to extend the current de minimis threshold applicable to dealers in Rule G-37 to municipal advisors through the proposed rule change.

Adding an Additional De Minimis Exclusion

Three of the five commenters that supported greater harmonization also urged the MSRB to add an additional de minimis exclusion for contributions made by an MFP or MAP to an ME official for whom the MFP or MAP is not entitled to vote if such contributions do not, in total, exceed $150 per election.[130] These commenters based their arguments on First Amendment concerns. C&D cited statements by the Commission when it adopted the IA Pay to Play Rule,[131] noting that the Commission acknowledged that the $150 limit for contributions to officials for whom the investment adviser could not vote was justified because non-residents might have legitimate interests in those elections, such as the interest of a resident of a metropolitan area in the city in which the person works. C&D suggested that a similar rationale would apply with respect to personnel of dealers and municipal advisors. Similarly, CCP argued that the Supreme Court's ruling in McCutcheon, reiterating the importance of associational rights, would make little sense if bans on out-of-district contributions were constitutional. Callcott noted that the "narrow tailoring" conclusion of Blount cannot continue to survive and noted that the lack of a

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128 Id. at n. 19.

129 Id. at 26 (quoting Blount, 61 F.3d at 947-48).

de minimis threshold for contributions to ME officials for whom an MAP is not entitled to vote is particularly vulnerable to First Amendment challenge.

In contrast, BDA, SIFMA and Sanchez did not advocate establishing a second de minimis contribution exclusion. BDA expressed concern that such an extension would create considerable chaos in the municipal securities market, and BDA and Sanchez both noted that the current approach in Rule G-37 is accepted and appears to be working well. Specifically speaking to recent Supreme Court jurisprudence, Sanchez expressed the view that Rule G-37 is narrowly tailored to only affect persons who seek specific types of business with municipal entities and not citizens at large.

As discussed above, the MSRB has determined to extend the current de minimis threshold applicable to dealers in Rule G-37 to municipal advisors through the proposed rule change. Current Rule G-37 and the proposed amendments are intended to address quid pro quo corruption and the appearance thereof in connection with the awarding of municipal securities business, municipal advisory business, and engagements to provide investment advisory services. Even in the absence of actual quid pro quo corruption, contributions to officials for whom an MFP or MAP is not entitled to vote are at heightened risk of the appearance of quid pro quo corruption, as the MFP or MAP's non-quid pro quo interest in that election is less likely to be immediately apparent to the public. Rule G-37 has previously withstood constitutional scrutiny and the proposed rule change would not amend the current de minimis thresholds in Rule G-37. The MSRB agrees with Sanchez that the proposed amendments to Rule G-37 are narrowly tailored. The MSRB notes again that comments based upon, or referring to, recent

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130 C&D, CCP and Callcott proposed this approach.

131 See comment letter from C&D, citing Order Adopting IA Pay to Play Rule, at 41035.

Supreme Court decisions are misplaced. Those cases presented different facts and circumstances and, for example, did not address regulations aimed at preventing quid pro quo corruption or the appearance thereof with respect to individuals engaged in securities-related business with municipal entities, or even regulations regarding individuals engaged in business with a governmental entity as a general matter. Further, as described above, Wagner, decided since McCutcheon, upheld a complete ban with no de minimis exclusion on contributions to federal campaigns by federal contractors. This suggests that Rule G-37's more tailored temporary limitation on business activities resulting from non-de minimis contributions to ME officials with the ability to influence the awarding of business to the regulated entity (and in the case of a municipal advisor third-party solicitor, the regulated entity clients or investment adviser clients of the municipal advisor third-party solicitor) would also survive constitutional scrutiny.

Look-back

SIFMA requested that the MSRB revise the "look-back" for MFPs and MAPs, which would provide that a regulated entity would be subject to a ban on applicable business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person before he or she became a "municipal finance representative" or "municipal advisor representative" of the regulated entity. Under SIFMA's proposed revision, a new exclusion would be added to the "look-back" for a contribution made by an individual that, at the time of the contribution, was subject to either the IA Pay to Play Rule or the Swap Dealer Rule if the contribution was made within the de minimis exceptions under those rules.

The MSRB has determined not to adopt SIFMA's proposed exclusion. The goal of Rule G-37, and the proposed amendments, is to address quid pro quo corruption or the appearance thereof when a contribution is made to an ME official and business of that municipal entity is

awarded to the contributor. The MSRB believes that the risk of such corruption or the appearance of such corruption in the municipal securities market is not diminished simply because a contribution does not trigger a ban in a different market under a different regulatory scheme. The exclusion proposed by SIFMA would, in effect, create a bifurcated de minimis threshold: one for MFPs and MAPs that were formerly investment advisers or swap professionals and another for all other MFPs and MAPs. As stated above, the MSRB believes that it is important to have a consistent de minimis threshold applicable to all regulated entities in the municipal market, as they operate in the same market and typically with the same clients.

Official of a Municipal Entity

WMFS suggested that the MSRB remove the concept of the different types of ME officials from the draft definition of "official of a municipal entity."[132] WMFS stated that it was not aware of any elected official that would be able to influence the selection of a municipal advisor without also having the ability to influence the selection of an underwriter. Thus, in its view, the draft amendments to this definition would unnecessarily complicate the rule and could create an enforcement loophole.

CCP, by contrast, welcomed the constitutional "tailoring" of the definition of "official of a municipal entity" through the creation of different categories of ME officials, although it suggested the definition was otherwise overbroad and vague. CCP noted that the definition of the term "official of a municipal entity" would extend to losing candidates who ultimately do not play a role in the selection of any dealer or municipal advisor, and, thus pose "little to no danger

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132 The draft amendments included two categories of ME officials: an "official with dealer selection influence" and an "official with municipal advisor selection influence." As described above, the proposed rule change retains these categories and adds an additional category of ME official, an "official of a municipal entity with investment adviser selection influence." See proposed Rule G-37(g)(xvi)(C).

of pay-to-play corruption."

The MSRB recognizes that it may be uncommon for an ME official to have the ability to influence the selection of only one type of professional. However, the MSRB has not received any comments that categorically state, much less demonstrate, that there are no such officials. Further, as CCP and other commenters acknowledged, the categories of ME officials are designed to narrowly tailor the rule to ensure that there is a nexus between a contribution made to an ME official and the ability of that ME official to influence the awarding of business to the contributor's firm (or in the case of a municipal advisor third-party solicitor, a regulated entity client or investment adviser client). With regard to CCP's remaining arguments, apart from the creation of the separate categories and the renaming of the "official of an issuer" term to "official of a municipal entity," all other elements of the longstanding "official of an issuer" definition are unchanged from that found in current Rule G-37. The fact that losing candidates ultimately have no influence in the selection of professionals does not avoid the potential appearance of quid pro quo corruption in the case of contributions to candidates. Thus, the MSRB has determined not to revise the definition of "official of a municipal entity" in response to the comments received.

Cross-bans

SIFMA stated that the cross-ban provision in draft amended Rule G-37(b)(i)(C) (proposed paragraph (b)(i)(D)) should be eliminated. SIFMA argued that the cross-ban provision is overly broad and does not comport with the MSRB's stated goal of requiring a link between a triggering contribution and the business banned by that contribution.

In contrast, The Public Interest Groups supported the cross-ban provision, noting that otherwise permitting contributions from one line of business of a dealer-municipal advisory firm to an ME official that has influence over awarding business to the other line of business within

the same firm would invite firms to "create legal fictions for [contributions] between its dealer and advisory services." Sanchez stated that the cross-ban would be appropriate for dealer-municipal advisors because many individuals within such firms engage in both dealer and municipal advisory activity, and to the extent that they do not, the business lines can be very closely related. Thus, Sanchez concluded, a contribution from persons or entities associated with one line of business of a dealer-municipal advisory firm and the awarding of business to the other line of business within the same firm will usually constitute quid pro quo corruption or give rise to the appearance thereof.

The MSRB does not believe that the cross-ban provision is inconsistent with the MSRB's goal of requiring a link between a ban on applicable business and a contribution made to an ME official with the ability to influence the awarding of that type of business. On the contrary, the cross-ban is a special provision narrowly tailored to ensure that the only business a dealer-municipal advisor will be prohibited from engaging in during the two-year period is the business that the ME official to whom the contribution was made had the ability to influence. While the cross-ban would subject a dealer-municipal advisor to a ban of a scope consistent with the type of influence held by the ME official to whom the contribution was made, the scope of the ban would not be dependent on the particular line of business with which the contributor is associated. The MSRB believes that this is the appropriate result given that, even though a dealer-municipal advisor may have two lines of business, the entity should be considered a single economic unit.

Moreover, the goal of the cross-ban is to address actual quid pro quo corruption or its appearance. The comments submitted by Sanchez and The Public Interest Groups support the view that there is a public perception of quid pro quo corruption when business is awarded to a

dealer-municipal advisor following the making of a contribution to an ME official with the ability to influence the selection of that firm for such business. These comments further support the MSRB's view that this appearance of quid pro quo corruption is not dependent on the particular line of business with which the contributor is associated.

Municipal Advisor Third-Party Solicitors

Under draft amended Rule G-37(b)(i)(A)(2) and (b)(i)(B)(2) (proposed paragraph (b)(i)(C)(2)), the triggering contributions made to an ME official by a municipal advisor third-party solicitor could trigger a ban on municipal securities business for a dealer that engaged the solicitor, or a ban on municipal advisory business for a municipal advisor that engaged the solicitor. SIFMA opposed these provisions, arguing that they would "turn back a well-established precept that market participants do not control third parties." If not removed, SIFMA suggested, alternatively, that these provisions impose a ban only when the contribution is made to an ME official with selection influence over the type of business the solicitor was engaged to solicit.

The MSRB does not believe that the imposition of a two-year ban on a dealer client or municipal advisor client under these provisions as a result of political contributions made by an engaged municipal advisor third-party solicitor (or its MAP or a PAC controlled by either the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor) is inappropriate or onerous. In order to achieve the purposes of the rule, the MSRB believes the two-year ban must be extended to apply to such contributions and has determined not to substantively amend the provision as suggested by SIFMA.

These provisions are narrowly tailored in that they would subject the regulated entity client to a ban on business with a municipal entity only when the regulated entity client engages

a municipal advisor third-party solicitor to solicit a municipal entity for business on behalf of the regulated entity. A regulated entity may have a number of means available to help prevent its municipal advisor third-party solicitor from making triggering contributions, including as SIFMA identified, contractual provisions and the training of solicitor personnel. While such actions may not guarantee compliance with the proposed rule change, in such situations, regulated entity clients could possibly avail themselves of an automatic exemption from a ban on business under section (j), as amended by the proposed amendments to Rule G-37. Moreover, if a regulated entity becomes subject to a ban on business in such circumstances, and requests exemptive relief from the relevant agency under proposed Rule G-37(i), the extent to which, prior to the triggering contribution, the regulated entity developed and instituted procedures reasonably designed to ensure compliance with the rule, including procedures designed to ensure the compliance of any engaged municipal advisor third-party solicitor, would be among the factors that would be considered by the agency in determining whether to grant such exemptive relief.

The MSRB understands SIFMA's suggestion that a ban for a regulated entity client should apply only when the municipal advisor third-party solicitor's triggering contribution is made to an ME official with selection influence over the type of business the solicitor was engaged to solicit. However, as with the cross-ban provision, the goal of the municipal advisor third-party solicitor provisions is to address actual quid pro quo corruption or its appearance. Just as non-de minimis contributions from a person associated with a different line of business of a dealer-municipal advisory firm can present an appearance of quid pro quo corruption, so too do the contributions of a party specifically hired to solicit the municipal entity for business on behalf of the dealer-municipal advisor. Similar to the cross-ban, the arising of an appearance of

quid pro quo corruption is not dependent on the particular line of business the solicitor was engaged to solicit.

Municipal Advisor Representative

SIFMA suggested that the MSRB narrow the scope of persons that could be a "municipal advisor representative" under draft amended Rule G-37(g)(iii) and thus could trigger a ban on applicable business or disclosure obligations for a municipal advisor. In SIFMA's view, only an associated person of a municipal advisor that is "primarily engaged" in municipal advisory activities should be a municipal advisor representative. By revising the term "municipal advisor representative" in this manner, SIFMA commented, the term would align with the relevant term for dealers and would move closer to the more narrowly defined group of persons subject to "pay to play" regulation under the IA Pay to Play Rule and the Swap Dealer Rule. SIFMA also commented that there is little risk that the political contributions of persons not "primarily engaged in" municipal advisory activities would create an appearance of quid pro quo corruption.

The MSRB has determined not to narrow the "municipal advisor representative" definition as suggested by SIFMA. Under the proposed rule change, the term "municipal advisor representative" would cross-reference the MSRB's "municipal advisor representative" definition under its municipal advisor professional qualification rules,[133] which itself is based on the scope of the definition of "municipal advisor" in the Dodd-Frank Act[134] and relevant rules and regulations thereunder. Under the SEC Final Rule, "municipal advisor" is to be broadly construed, and is not limited by the standard that a person must be "primarily engaged in" certain

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133 See Rule G-3(d)(i).

134 See 15 U.S.C. 78o-4(e)(4).

activities to be a municipal advisor.[135] Further, in granting authority to the Board to regulate municipal advisors, including regulation with respect to "pay to play" practices, Congress appears to have contemplated that all municipal advisors would be subject to "pay to play" regulation by the Board, regardless of the degree to which they engage in such municipal advisory activities.[136] Moreover, the MSRB's approach under the proposed rule change would create more consistency between defined terms in MSRB rules.

Other Constitutional Issues

Because they relate to an area of First Amendment protection, many commenters on the draft amendments framed their comments in light of their reading of the applicable constitutional standards. In addition to the policy matters discussed above, commenters expressed concerns as to the application of Rule G-37, as amended by the proposed amendments, to "independent expenditures." They also urged the consideration of alternatives to the draft amendments and made various other comments, discussed below.

Independent Expenditures

Callcott and CCP stated that the Board should clarify that "independent expenditures" in support of ME officials are permitted under the proposed amendments to conform to Supreme

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135 See generally SEC Final Rule; Order Adopting SEC Final Rule.

136 As explained in the Request for Comment, the regulation of municipal advisors is, as the SEC has recognized, generally intended to address problems observed with the unregulated conduct of some municipal advisors, including "pay to play" practices. See Order Adopting SEC Final Rule, at 67469. "Indeed, Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already 'has an existing, comprehensive set of rules on key issues such as pay-to-play … and that consistency would be important to ensure common standards.'" Request for Comment, at 2 (quoting Senate Report, at 149 (2010)).

Court case law.[137]

The MSRB has previously stated in interpretive guidance under Rule G-37 that MFPs are free to, among other things, solicit votes or other assistance for an issuer official so long as the solicitation does not constitute a solicitation of or coordination of contributions for the issuer official.[138] In addition, in upholding the constitutionality of Rule G-37, the Blount court observed that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events."[139] In addition, the proposed amendments, like current Rule G-37, would generally not prohibit contributions to so-called "super PACs" or independent expenditure-only committees.[140] Like

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137 The Federal Election Commission defines an "independent expenditure" generally as an expenditure "for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." 11 CFR 100.16(a).

138 See Solicitation of Contributions, reprinted in MSRB Rule Book (May 21, 1999).

139 Blount, 61 F.3d at 948; see Reminder of Obligations Under Rule G-37 on Political Contributions and Rule G-27 on Supervision When Sponsoring Meetings and Conferences Involving Issuer Officials, reprinted in MSRB Rule Book (March 26, 2007) at n. 1, quoting Blount, 61 F.3d at 948.

140 However, consistent with current Rule G-37 and related interpretive guidance, regulated entities and their MFPs and MAPs would be prohibited from soliciting others (including affiliates of the regulated entity or any PACs) to make contributions to certain ME officials. Additionally, regulated entities and certain categories of MFPs and MAPs would be prohibited from soliciting others (including affiliates of the regulated entity or any PACs) to make contributions to certain ME officials. Further, contributions by a PAC controlled by the regulated entity or an MFP or MAP of the regulated entity to certain ME officials may result in a ban on municipal securities business or municipal advisory business with that municipal entity. Furthermore, regulated entities and their MFPs and MAPs would be prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means, including, for example, using an affiliated PAC as a

current Rule G-37, the proposed rule change would not impose any restriction on "independent expenditures" in support of ME officials.

Alternatives to the Draft Amendments

CCP stated that the MSRB should consider alternatives to the draft amendments, including tougher penalties, stronger investigative tools, whistleblower protections and providing exemptions for municipal advisory contracts that are put out for bid in a transparent way.

The MSRB has determined not to amend the proposed rule change in response to these comments. As part of its normal rulemaking process and consistent with its policy on economic analysis, the MSRB has considered alternatives to the proposed rule change; however, in each case, it determined that these alternatives would likely fail to achieve the same benefits as the proposed rule change or would achieve the same or substantially similar benefits at likely higher cost.[141] The MSRB is sensitive to the constitutional implications of Rule G-37 and believes that the proposed rule change strikes the appropriate balance between protecting constitutional freedoms and addressing quid pro quo corruption and the appearance thereof in the municipal securities market. For example, the MSRB has continued to improve its investigative tools to

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conduit for making a contribution to an ME official. See MSRB Guidance on Dealer-Affiliated Political Action Committees Under Rule G-37 (December 12, 2010).

141 For example, the MSRB considered not requiring a nexus between the influence that may be exercised by an ME official who receives a contribution and the business in which the regulated entity is engaged or is seeking to engage. A broader set of potential ban-triggering events would likely increase costs and may negatively impact competition without significantly improving market integrity or merit-based competition. The MSRB also considered not allowing an orderly transition period for pre-existing non-issue-specific contractual obligations following a ban on business. This alternative would risk imposing significant costs on municipal entities and, because the ban-triggering event would by definition occur after a firm had been selected, does not appear to address the identified needs better than the proposed rule change. The MSRB also considered, but ultimately rejected for the reasons stated herein, modeling the "pay to play" regime for municipal advisors on other "pay to play" regimes in the financial services market in favor of the approach taken in the proposed rule change.

audit suspected "pay to play" activities involving dealers in the municipal market. However such tools alone would not be sufficient to meet the objectives of the proposed rule change because municipal advisors, in their capacity as such, are currently not subject to any "pay to play" rules. Improved tools to uncover quid pro quo corruption are meaningless without legal obligations designed to prohibit such practices. A similar rationale applies with respect to tougher penalties and whistleblower protections. Additionally, while the definition of "municipal securities business" set forth in current Rule G-37(g)(vii) and in proposed Rule G-37(g)(xii) effectively provides the exemptions CCP describes for certain municipal securities business conducted on a competitive bid basis, the MSRB understands that the nature of municipal advisory business does not currently lend itself to a competitive bid process in a manner comparable to which it is conducted for municipal securities business.

Other

Callcott interpreted the draft amendments to Rule G-37 to prohibit contributions to political parties, which would in Callcott's view have caused Rule G-37 to be unconstitutional. The proposed amendments to Rule G-37, like current Rule G-37, would not prohibit the making of political contributions to political parties. Rather, proposed amended section (c) would prohibit the solicitation and coordination of payments to a political party of a state or locality where the regulated entity is engaging or seeking to engage in business. Accordingly, the MSRB has determined not to further amend proposed section (c) in response to this comment.

CCP stated that draft amended section (e), the anti-circumvention provision, is insufficiently tailored under the First Amendment. The MSRB believes that this provision, which would be consistent with similar provisions in other federal "pay to play" regulations, including the IA Pay to Play Rule and the Swap Dealer Rule, would be narrowly tailored to prohibit

regulated entities and their MFPs and MAPs from, directly or indirectly, doing any act that would result in a violation of sections (b) or (c) of Rule G-37. Accordingly, the MSRB has determined not to make any changes to section (e) in response to this comment.

CCP stated that a number of other terms or provisions under the draft amendments were vague or unclear. Specifically, CCP indicated that the draft amended MFP definition and draft MAP definition would make Rule G-37 less clear and difficult to determine what constitutes a sufficient "control" relationship for purposes of establishing vicarious liability for several categories of MFPs or MAPs. In addition, CCP expressed a belief that the draft amended definition for the term "solicit" was overly broad and vague because it would be difficult to determine when an "indirect communication" constituted a solicitation. CCP also noted that section (c) under draft amended Rule G-37 was overbroad because it would be difficult to determine whether a dealer or municipal advisor was "seeking" to engage in municipal securities business or municipal advisory business with a municipal entity or in a state or locality.

The MSRB disagrees with each of these assertions. The proposed amendments set forth, for municipal advisors generally, based upon their activities, functions and positions, categories that are analogous and substantially similar to those used to describe various types of MFPs under the current rule. The proposed amendments to the definition of municipal finance professional are non-substantive (i.e., assigning names to the categories), and, thus would have no impact on an analysis or determination regarding control relationships for purposes of establishing vicarious liability among various MFPs, and, by extension, MAPs. Further, as discussed supra, Rule G-37, including section (c), previously withstood constitutional scrutiny in Blount, and the proposed amendments simply would extend the core of section (c) to municipal advisors. In addition, while the "solicit" definition would be amended under the proposed rule

change, the proposed amended definition in subsection (g)(xix) would be consistent with the current definition of "solicit" that it would replace.[142] Both the proposed and current definitions of "solicit" incorporate the "indirect communication" language. Moreover, the MSRB previously issued interpretive guidance regarding the term "solicitation" for purposes of Rule G-37.[143] As discussed supra, the MSRB intends to extend the existing interpretive guidance on Rule G-37 for dealers to municipal advisors on analogous issues. Thus, the MSRB believes at this time that there is sufficient guidance regarding these provisions and terms.

Modification of the Two-Year Ban

Draft amended Rule G-37(b)(i)(E) would provide for a modification of the ending of the two-year ban on applicable business under certain circumstances when business with the municipal entity is ongoing at the time of the triggering contribution. SIFMA stated that this modification should be tailored to apply only to any municipal entity with which a regulated entity is engaged in business at the time of the contribution. SIFMA explained that, according to its reading of the modified two-year ban, in cases where the recipient of a triggering contribution is an ME official of multiple municipal entities, a regulated entity would be prohibited from engaging in applicable business with each municipal entity for the extended period of time, even if the regulated entity was engaged in ongoing business with only one of the municipal entities at

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142 See discussion of proposed definition of "solicit" in "Municipal Advisor Third-Party Solicitors" and n. 39, supra. The current definition of "solicit," which would be deleted, provides: "Except as used in section (c), the term 'solicit' means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i)." Rule G-37(g)(ix). Rule G-38(b)(i) provides: "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."

143 See MSRB Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38 (June 8, 2006).

the time of the contribution.

To provide additional clarity, the MSRB has amended this provision and consolidated it with the provisions pertaining to the orderly transition period in a single paragraph. Under paragraph (b)(i)(E) in the proposed rule change, a triggered ban on applicable business with a given municipal entity will be extended by the duration of the orderly transition period described in proposed Rule G-37(b)(i)(E). The length of a ban on applicable business for one municipal entity with which a regulated entity is banned from engaging in applicable business is unaffected by the length of the ban on applicable business with another municipal entity. This is the case even where the ban on applicable business with both municipal entities stemmed from the same contribution to an ME official with the ability to influence the awarding of business to both municipal entities.[144]

Recordkeeping and Reporting

Duplicate Books and Records

BDA and Sanchez sought clarification as to whether the draft amendments would require dealer-municipal advisors to keep duplicate books and records. BDA specifically expressed concern that the draft amendments would require employees who act as both a municipal advisor and serve as bankers in an underwriter capacity to keep dual records and disclosures. In addition, Sanchez suggested that Rules G-8 and G-9 should be revised to not require separate maintenance of information that is included on Form G-37 and to make clear that the availability of Form G-

144 For example, if a ban triggering contribution is made to an ME official of three municipal entities, and the regulated entity avails itself of an orderly transition period spanning one week for one municipal entity and two weeks for the second municipal entity, but does not avail itself of an orderly transition period for the third municipal entity, its ban with the first municipal entity is extended by one week, its ban with the second municipal entity is extended by two weeks, and its ban with the third municipal entity is not extended.

37 on EMMA would satisfy the maintenance requirement.

The proposed amendments would not require a dealer-municipal advisor to make and keep dual records and disclosures. The MSRB therefore has determined not to amend Rules G-8 and G-9 as suggested by commenters. In addition, as noted in the Request for Comment, dealer-municipal advisors could make all required disclosures on a single Form G-37. Additionally, the proposed amendments to Rules G-8 and G-9 would not prohibit dealer-municipal advisors from making and keeping a single set of the records that would be required under the proposed amendments. Rather, the proposed amendments would provide dealer-municipal advisors with the flexibility to consolidate such records or to keep such records separate as long as they are kept in compliance with all of the terms of Rules G-8 and G-9. If a dealer-municipal advisor were to elect to keep a consolidated set of such records, such records would need to clearly identify whether an MAP or MFP is solely an MAP, solely an MFP, or both.

The MSRB also has determined, at this time, not to further revise Form G-37 and Rules G-8 and G-9 to require the disclosure of much of the information required to be kept under those rules in lieu of separately maintaining such records. Those data are necessary for examiners to examine for compliance with the provisions of Rule G-37 and the MSRB believes that requiring the public disclosure of such information would likely unjustifiably add to, rather than reduce, the compliance burden for regulated entities.

Books and Records When No Contributions Are Made

Castle and WMFS both expressed support for regulation to curb "pay to play" practices, but stated that there should be no books, records or filing requirements for municipal advisors that do not make political contributions. To support this approach, WMFS cited the requirement under the Dodd-Frank Act that the Board not impose an unnecessary burden on small municipal

advisors.[145] The Public Interest Groups recommended that the MSRB substantially broaden the recordkeeping that would be required under the proposed amendments to require regulated entities to disclose all political contributions made by any affiliate and to itemize these contributions for comparison to relevant underwritings.

The MSRB believes that the information that would be required to be reported to the Board on Form G-37, even in the absence of any reportable contributions for the applicable reporting period, is important to evaluate compliance with the proposed amended rule and to facilitate public scrutiny of a regulated entity's political contributions (even if made in a different reporting period) and applicable business. The MSRB therefore has determined not to propose the amendments suggested by these commenters. The MSRB believes that the limited nature of the information required to be reported when a regulated entity does not have any reportable contributions and the available relief from any reporting obligations in certain circumstances under the proposed amendments to Rule G-37(e)(ii) sufficiently accommodate small municipal advisors. Similarly, the records that a municipal advisor would be required to make and keep current under the proposed amendments to Rules G-8 and G-9 are necessary to examine municipal advisors for compliance with Rule G-37, as amended by the proposed amendments, and would generally be limited for a municipal advisor that does not make any political contributions. These records would likely also be limited for a small municipal advisor, which necessarily will have fewer MAPs for which it would be required to keep records.

The MSRB seeks to appropriately balance the burden of complying with the proposed rule change's public reporting requirements with the benefit to the public of such disclosure. Moreover, the MSRB is cognizant of the constitutional implications of the proposed rule change,

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145 See 15 U.S.C. 78o-4(b)(2)(L)(iv).

and seeks to narrowly tailor the rule to achieve its stated objectives. At this juncture, the MSRB does not believe that the additional public disclosure suggested by The Public Interest Groups is warranted for the proposed rule change to achieve its objectives.

Paper Submissions

Sanchez suggested that the MSRB should enhance the searchability of Form G-37 submitted to the Board in furtherance of the Board's stated objective to promote public scrutiny of the contributions made by regulated entities. Sanchez also suggested that the MSRB not allow the submission of paper versions of Form G-37.

The MSRB agrees and proposed subsection (e)(iv) of Rule G-37 would require all Form G-37 submissions to be submitted to the Board in electronic form, thereby eliminating the option to submit paper versions of these forms. The MSRB also plans to set forth in the Instructions for Forms G-37, G-37x and G-38t, referenced in subsection (e)(iv) of the proposed amendments to Rule G-37 a requirement that all electronic submissions be in word-searchable portable document format (PDF). All regulated entities have the ability to access the MSRB's electronic submission portal, through which electronic Form G-37 and Form G-37x are submitted. Further, given the significant technological advances since the MSRB first required the submission of Form G-37, the now widespread availability of computers and PDF software, and low percentage of Forms G-37 the MSRB currently receives in paper form, the MSRB believes the burden as a consequence of no longer accepting paper submissions will be relatively low.

Miscellaneous

ACEC expressed the view that the "look-back" in the draft amendments would create a potential conflict with existing employment law which, ACEC stated, does not favorably view asking an applicant questions during the hiring process that are not directly related to the job. In

addition, ACEC stated that the MSRB should provide guidance as to what constitutes an indirect contribution to a trade association PAC. Regarding PACs, The Public Interest Groups expressed concern regarding political giving by PACs that may or may not be controlled by a dealer or an MFP of the dealer. It stated that the current disclosure and reporting apparatus does not provide the appropriate deterrent to prevent circumvention of Rule G-37 through the use of PACs.

While the MSRB is sensitive to the fact that regulated entities may be subject to many regulatory schemes, it does not believe that the look-back, which has existed under Rule G-37 for approximately two decades, would be inconsistent with other areas of law. The proposed rule change merely extends this same concept to municipal advisors. Similarly, the MSRB intends to extend the existing interpretive guidance under Rule G-37 for dealers to municipal advisors on analogous issues. The MSRB believes at this time that there is sufficient guidance regarding contributions to and through PACs as well as circumvention of Rule G-37.

WMFS stated that the MSRB should consider prohibiting the making of contributions to bond ballot campaigns. While the MSRB is sensitive to concerns about bond ballot contributions, the established objective of this rulemaking initiative is to extend the principles embodied in Rule G-37 to municipal advisors, with appropriate modifications to take into account the differences between the regulated entities and the existence of municipal advisor third-party solicitors and dealer-municipal advisors. While bond ballot contributions are not the subject of this initiative, the MSRB continues to review disclosures regarding contributions made to bond ballot campaigns and will separately make any determination whether to engage in further rulemaking in this area.[146]

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146 Since February 1, 2010, the MSRB has required disclosure, under Rule G-37, of non-de minimis contributions to bond ballot campaigns made by dealers and certain of their associated persons. In 2013, the MSRB amended Rule G-37 to require the disclosure of

ACEC requested that the MSRB clarify whether the de minimis exclusion would apply separately to primary and general elections. The Board has previously stated that, if an issuer official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official may contribute up to $250 for the primary election and $250 for the general election to the official.[147] As noted, the MSRB intends all existing interpretive guidance for dealers to apply to the analogous interpretive issues for municipal advisors. Thus, under the proposed rule change, the de minimis exclusion would apply separately to primary and general elections.

ACEC also urged the MSRB to reserve action on the proposed rule change until the Commission has fully clarified the definition of municipal advisory services. The MSRB has determined not to delay this rulemaking initiative. Since July 1, 2014, all municipal advisors, including municipal advisors that are also engineers and do not qualify for an exclusion or exemption under the SEC Final Rule, have been required to comply with the provisions of the SEC Final Rule. They are also subject to a number of MSRB rules, such as Rule G-17, regarding fair dealing, Rule G-44, regarding supervisory and compliance obligations, and Rule G-3, regarding registration and professional qualification requirements. At this juncture, all municipal

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additional information related to the contributions made by dealers and certain of their associated persons to bond ballot campaigns and the municipal securities business engaged in by dealers resulting from voter approval of the bond ballot measure to which such contributions relate. The proposed rule change would extend these disclosure provisions to municipal advisors. In connection with the 2013 rulemaking initiative, the MSRB stated that the more detailed disclosures will help inform the Board whether further action regarding bond ballot campaign contributions is warranted, up to and including a corresponding ban on engaging in municipal securities business as a result of certain contributions. See MSRB Notice 2013-09, SEC Approves Amendments to Require the Public Disclosure of Additional Information Related to Dealer Contributions to Bond Ballot Campaigns Under MSRB Rules G-37 and G-8 (April 1, 2013).

147 See MSRB Rule G-37 Interpretive Notice – Application of Rule G-37 to Presidential Campaigns of Issuer Officials (March 23, 1999).

advisors should be registered as such, and in compliance with applicable rules. Accordingly, the MSRB has determined not to reserve action on this rulemaking initiative.

Anonymous stated that registered investment advisers that are also municipal advisors should be exempt from the proposed rule change because, in its view, such municipal advisors are already subject to stringent political contribution compliance and recordkeeping requirements. The MSRB has determined not to exempt such municipal advisors from the proposed rule change. As discussed supra, the MSRB is sensitive to the effect of differing regulation for the limited number of dealers and municipal advisors that also operate in the investment advisory market or the swap market. However, the Board does not believe that municipal advisors that also act as investment advisers should be subject to different regulation than their non-investment adviser municipal advisor counterparts.

Lastly, ACEC stated that some commercial entities not primarily in the business of providing advisory services related to municipal securities may, nonetheless, be engaged in activities that are regulated (e.g., engineers). It noted that for the larger among these firms, implementing a compliance regime consistent with the proposed amendments would be challenging and that the MSRB should consider these administrative costs in the context of this rulemaking initiative. As described supra, the MSRB has considered the impact of the proposed rule change on all municipal advisors, including small municipal advisors and municipal advisors that have not previously been subject to federal financial regulation, and continues to believe that the proposed rule change is necessary to address quid pro quo corruption or the appearance thereof in the municipal market.

Economic Analysis

There were no comments received that were specific to the preliminary economic

analysis presented in the Request for Comment nor did commenters provide any data to support an improved quantification of benefits and costs of the rule. Comments about the compliance burdens of specific elements of the draft amendments are discussed above.

Implementation Period and Transitional Effect

SIFMA requested an implementation period of no less than six months from the effective date of the proposed rule change.

In response to this comment, the MSRB has revised section (h) of the draft amendments to Rule G-37 to provide that the prohibitions in proposed amended section (b) of Rule G-37 (regarding the ban on business) would only arise from contributions made on or after an effective date to be announced by the MSRB in a regulatory notice published no later than two months following SEC approval of the proposed rule change. Such effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following SEC approval of the proposed rule change. This lengthening of the implementation period should mitigate compliance costs and provide sufficient time for municipal advisors to identify the MAPs and MFPs that will be subject to the proposed rule change and for dealers and municipal advisors to modify existing, or adopt new, relevant policies or procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2015-14 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2015-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm.

Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2015-14 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.[148]

Secretary

[148] 17 CFR 200.30-3(a)(12).

MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2014-15

Publication Date
August 18, 2014

Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
October 1, 2014

Category
Fair Practice

Affected Rules
Rule G-8; Rule G-9; Rule G-37

Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors

Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to Rule G-37, on political contributions made by brokers, dealers and municipal securities dealers ("dealers") and prohibitions on municipal securities business, to extend the rule to cover municipal advisors. The draft amendments are designed to address potential "pay to play" practices by municipal advisors, consistently with the MSRB's existing regulation of dealers. The MSRB is also seeking comment on associated draft amendments to Rules G-8, on books and records, and G-9, on the preservation of records, and associated disclosure forms, Forms G-37 and G-37x.

Comments should be submitted no later than October 1, 2014, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, Virginia 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Michael L. Post, Deputy General Counsel, Sharon Zackula, Associate General Counsel, or Saliha Olgun, Counsel, at 703-797-6600.

[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act" or "Act") to provide for the regulation by the Securities and Exchange Commission (SEC) and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons.[2] The Dodd-Frank Act establishes a federal regulatory regime that requires municipal advisors to register with the SEC and prohibits municipal advisors from engaging in any fraudulent, deceptive, or manipulative act or practice.[3] Under the Dodd-Frank Act, the MSRB is granted broad rulemaking authority over municipal advisors and municipal advisory activities.[4]

The regulation of municipal advisors and their advisory activities is, as the SEC has recognized, generally intended to address problems observed with the unregulated conduct of some municipal advisors, "*including 'pay to play' practices*, undisclosed conflicts of interest, advice rendered by financial advisors without adequate training or qualifications, and failure to place the duty of loyalty to their clients ahead of their own interests."[5] Indeed, Congress determined to grant rulemaking authority over municipal advisors to the MSRB, in part, because it already "has an existing, comprehensive set of rules on key issues such as pay-to-play . . . and that consistency would be important to ensure common standards."[6]

As charged by Congress, the MSRB is in the process of developing a comprehensive regulatory framework for municipal advisors and their associated persons, including the draft amendments to Rule G-37.[7] The draft

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[2] Pub. Law No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

[3] *See* Section 15B(a)(1)(B) and (a)(5) of the Securities Exchange Act of 1934 ("Exchange Act").

[4] *See* Section 15B(b)(2) of the Exchange Act.

[5] Exchange Act Release No. 70462, (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013) at 67469 (emphasis added) ("MA Registration Adopting Release"); *see id.* at 67475 nn.104-6 and accompanying text (discussing relevant enforcement actions); *see also* S. Report 111-176, at 38 (2010) ("Senate Report").

[6] Senate Report, at 149.

[7] In furtherance of this framework, the MSRB filed with the SEC a proposed rule change regarding the supervisory and compliance obligations of municipal advisors. *See* Exchange Act Release No. 72706 (Jul. 29, 2014), 79 FR 45546 (Aug. 5, 2014) (Notice of filing of SR-

amendments to Rule G-37 would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing practices by municipal advisors that involve corruption or the appearance of corruption, undermine the integrity of the municipal securities market, increase costs borne by issuers and investors, and create artificial barriers to competition. Extending the policies embodied in Rule G-37 to municipal advisors through targeted amendments to Rule G-37 itself would help ensure common standards for dealers and municipal advisors.

Existing Rule G-37

"Pay to play" practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a *quid pro quo* for the receipt of government contracts. In the years preceding the MSRB's adoption in 1994 of Rule G-37, widespread reports regarding the existence of "pay to play" practices had fueled industry, regulatory and public concerns, calling into question the integrity, fairness, and sound operation of the municipal securities market.[8] In 1993, the MSRB proposed Rule G-37 to address such practices, stating that "[p]olitical contributions create a potential conflict of interest for issuers, or at the very least the appearance of a conflict, when dealers make contributions to officials responsible for, or capable of influencing the outcome of, the awarding of municipal securities business and then are awarded business by these officials. The Board believes that the appearance of impropriety is as damaging as any actual improprieties that may have transpired."[9] The MSRB also identified problems associated with such practices, including: undermining investor confidence, which is essential to the liquidity and capital-raising ability of the market; creating artificial

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MSRB-2014-06). Also, the MSRB issued requests for comment on the duties of non-solicitor municipal advisors and professional qualification requirements for municipal advisors. *See* MSRB Notice 2014-01, *Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors* (Jan. 9, 2014); and MSRB Notice 2014-08, *Request for Comment on Establishing Professional Qualification Requirements for Municipal Advisors* (Mar. 17, 2014).

[8] Exchange Act Release No. 33868, 59 FR 17621, 17623 (Apr. 13, 1994) ("SEC Rule G-37 Approval Order ") (noting that the widespread nature of the complaints regarding such "pay to play" practices in the municipal securities market had received considerable attention from Congress, the SEC, the MSRB, the securities industry, the media, and the public.)

[9] MSRB Reports, Vol. 13, No. 4 at p. 6 (Aug. 1993).

barriers to competition; and increasing market costs.[10] In approving Rule G-37 in 1994, the SEC affirmed that the rule was adopted "to address the real as well as perceived abuses resulting from 'pay to play' practices in the municipal securities market."[11] In addition, the SEC noted that "[Rule G-37] represents a balanced response to allegations of corruption in the municipal securities market."[12]

Rule G-37 is a comprehensive regulatory regime composed of several separate and mutually reinforcing requirements for dealers. Chief among them are: limitations on business activities that are triggered by the making of certain political contributions; limitations on solicitation and coordination of political contributions; and disclosure and recordkeeping regarding political contributions and municipal securities business.

The regime established by Rule G-37 is widely recognized as having significantly curbed "pay to play" practices and the appearance of such practices in the municipal securities market.[13] Moreover, Rule G-37 has been used as a model by federal regulators to create "pay to play" regulations in other segments of the financial services industry (*e.g.,* Rule 206(4)-5 adopted by the SEC under the Investment Advisers Act of 1940 that applies to investment advisers (the "IA Rule") and Rule 23.451 adopted by the Commodity Futures Trading Commission that applies to swap dealers (the "Swap Dealer Rule")).

Rule G-37 is currently limited in its application to dealers. Existing Rule G-37(b) prohibits dealers from engaging in municipal securities business with an issuer within two years after a triggering contribution to an official of such issuer is made by: (i) the dealer; (ii) any defined municipal finance professional ("MFP") of the dealer; or (iii) any political action committee ("PAC") controlled by either the dealer or any MFP of the dealer (the "ban on municipal securities business"). Under the principle exclusion to the ban on municipal securities business, a contribution is *de minimis,* and will not

[10] *See id.* at 6.

[11] *See* SEC Rule G-37 Approval Order at 17624.

[12] *See* SEC Rule G-37 Approval Order at 17628.

[13] *See* Release No. IA-3043 (Jul. 1, 2010), 75 FR 41018, at 41020, 41026-41027 (Jul. 14, 2010) ("IA Pay to Play Approval Order") (discussing the rationale for adopting the SEC's "pay to play" rule for investment advisers and modeling major components of SEC Rule 206(4)-5 on Rule G-37); *see also id.* at n. 101 and accompanying text.

trigger a ban on municipal securities business, if made by an MFP to an official for whom the MFP is entitled to vote if such contribution, together with any other contributions made by the MFP to the official, do not exceed $250 per election. There is no *de minimis* exclusion for a contribution to an official for whom the MFP is not entitled to vote.

Existing Rule G-37(c) prohibits dealers and their MFPs from soliciting or coordinating contributions to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business. Additionally, dealers and certain of their MFPs are prohibited from soliciting or coordinating payments to a political party of a state or locality where the dealer is engaging or seeking to engage in such business. Existing Rule G-37(d) is an anti-circumvention provision prohibiting dealers and MFPs from, directly or indirectly, through any person or means, doing any act that would result in a violation of section (b) or (c). Existing Rule G-37(e) requires dealers to disclose to the MSRB certain information related to their contributions and their municipal securities business, which the MSRB then makes available to the public for inspection via its Electronic Municipal Market Access (EMMA®) website.

Although Rule G-37 is currently limited in its application to dealers, it applies to certain activities of dealers that are now defined as municipal advisory activities in accordance with the Dodd-Frank Act and rulemaking by the SEC related to the registration of municipal advisors. Specifically, existing Rule G-37 defines as a type of MFP, persons who primarily engage in municipal securities representative activities, which include the provision of "financial advisory or consultant services for issuers in connection with the issuance of municipal securities."[14] At a minimum, most of these financial advisory and consultant services constitute municipal advisory activities under Section 15B(e)(4) of the Exchange Act and rules and regulations thereunder. In addition, a triggered ban on municipal securities business encompasses, under existing Rule G-37, the dealer's provision of those same financial advisory and consultant services. Existing Rule G-37, however, does not apply at all to non-dealer municipal advisors, and does not necessarily apply to all municipal advisory activities of dealers that are also municipal advisors ("dealer-municipal advisors").

Summary of Draft Amendments to Rules G-37, G-8 and G-9

Draft amended Rule G-37 applies to all dealers and all municipal advisors, including dealer-municipal advisors, non-dealer municipal advisors and,

[14] *See* Rule G-37(g)(iv)(A); Rule G-3(a)(i)(A)(2).

specifically, municipal advisors that solicit municipal entities on behalf of third parties ("municipal advisor third-party solicitors") (collectively "regulated entities"). The draft amendments extend the standards embodied in existing Rule G-37, that have long applied to dealers, to municipal advisors.

The core standards of existing Rule G-37 are substantially the same as extended by the draft amendments to municipal advisors. The draft amendments extend the principle of the ban on municipal securities business to municipal advisors, by generally providing that they are subject to a two-year ban on "municipal advisory business" following the making of a triggering contribution. In addition, municipal advisors are prohibited from soliciting or coordinating contributions from others to an official of a municipal entity with which they are engaging or seeking to engage in municipal advisory business. They are also prohibited from soliciting or coordinating payments to a political party of a state or locality where they are engaging or seeking to engage in municipal advisory business. Also, the existing anti-circumvention provision is extended to municipal advisors, by prohibiting them from committing indirect violations of the ban on municipal advisory business or the prohibition on soliciting or coordinating contributions or payments. Finally, the existing public disclosure provisions are extended to municipal advisors, requiring them to disclose information about their political contributions and municipal advisory business.

The draft amendments, however, make some modifications to these core standards, for both dealers and municipal advisors, to account for differences between the regulated entities and the activities in which they engage. For example, the draft amendments require a link between a ban on municipal securities business and a contribution made to an official with the ability to influence the awarding of that type of business. They also similarly require a link between a ban on municipal advisory business and a contribution made to an official with the ability to influence the awarding of that type of business. In addition, the draft amendments include provisions tailored to address the unique issues presented by the existence of dealer-municipal advisors and of municipal advisor third-party solicitors (municipal advisors that are soliciting business on behalf of third-party dealers, municipal advisors or investment advisers, discussed in greater detail below).

The draft amendments to Rules G-8, on books and records, and G-9, on preservation of records, make the related and necessary changes to those rules based on the draft amendments to Rule G-37. The draft amendments impose on municipal advisors substantially the same recordkeeping requirements as currently exist for dealers. The draft amendments to Forms

G-37 and G-37x allow those forms to be used by both dealers and municipal advisors to make the disclosures required by draft amended Rule G-37.

Request for Comment

Draft Amendments to Rule G-37

Purpose

Paragraph (a) of existing Rule G-37 sets forth the core purposes of Rule G-37, which include the protection of investors and the public interest. It further describes the key mechanisms through which the rule aims to achieve its purposes, namely the ban on municipal securities business following the making of a triggering contribution to an official of an issuer and the public disclosure of information regarding dealers' political contributions and municipal securities business.

The draft amendments modify the purpose section to reflect that the ban on business provisions and the public disclosure requirements under the draft amended rule apply to both dealers and municipal advisors. Also, "municipal entities"[15] and "obligated persons" are added to the purpose section as parties that the rule is intended to protect, which reflects the broader scope of the MSRB's congressional charge under the Dodd-Frank Act. The term "municipal entity" is substituted for "issuer" in paragraph (a) and generally throughout the rule.

Municipal Advisor Third-Party Solicitors

As part of the extension of the policies contained in Rule G-37 to all municipal advisors, the draft amendments add a new defined term, "municipal advisor third-party solicitor," a municipal advisor that, for compensation, solicits a municipal entity on behalf of a dealer, municipal

[15] "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act and rules promulgated thereunder. *See* Exchange Act Rule 15Ba1-1(g), which defines municipal entity to mean "any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (i) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) Any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (3) Any other issuer of municipal securities." The term includes both issuers of municipal securities as well as certain non-issuer entities. Examples of non-issuer municipal entities include public pension funds, local government investment pools ("LGIPs"), other state and local governmental entities or funds, and participant-directed investment programs or plans, such as 529 and 403(b) plans.

advisor or investment adviser that does not control, is not controlled by, or is not under common control with the municipal advisor third-party solicitor.[16] In addition, the term "solicit" is defined to mean to make a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement of a dealer, municipal advisor or investment adviser.[17] Under the draft amendments to Rule G-37, the retention of a municipal advisor third-party solicitor has special implications for the regulated entity clients that retain the municipal advisor third-party solicitor, because, as explained in the sections below, the scope of persons from whom a contribution may trigger a ban on business for the regulated entity is expanded.

Ban on Business

Existing Rule G-37 sets forth a ban on municipal securities business that might have otherwise been awarded as a *quid pro quo* for a contribution, or as to which the appearance of a *quid pro quo* might have arisen. It prohibits a dealer from engaging in municipal securities business with an issuer within two years after a triggering contribution is made to an official of an issuer by the dealer, an MFP of the dealer or a PAC controlled by the dealer or an MFP. Draft amended Rule G-37(b)(i)(A) retains this ban on municipal securities business for dealers, with modifications discussed in detail below, and draft amended Rule G-37(b)(i)(B) introduces a parallel two-year ban on municipal advisory business applicable to municipal advisors.

Under the draft amendments, as discussed below, whether a contribution will trigger a ban on municipal securities business or municipal advisory business for the dealer or municipal advisor generally depends on the identity of the person who made the contribution, the identity of the official to whom the contribution was made, and whether an exclusion from the ban applies.

Persons From Whom Contributions May Trigger a Ban on Business. Under existing Rule G-37, contributions by the dealer, an MFP of the dealer or a PAC controlled by the dealer or an MFP may trigger a ban on municipal securities business for the dealer. Under paragraph (b)(i)(A)(1) of draft amended Rule G-37, the scope of persons from whom a contribution may trigger a ban on municipal securities business for a dealer remains the same, except paragraph (b)(i)(A)(2) adds three new categories of persons when the dealer

[16] *See* Draft Amended Rule G-37(g)(x).

[17] *See* Draft Amended Rule G-37(g)(xix).

retains a municipal advisor third-party solicitor. These three are: the retained municipal advisor third-party solicitor, certain of its associated persons who are defined as its municipal advisor professionals ("MAPs"), and PACs controlled by either the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor. If a triggering contribution is made by any of these three categories of persons, a ban on municipal securities business would apply to the dealer that retained the municipal advisor third-party solicitor (the "dealer client") *and* a ban on municipal advisory business would apply to the municipal advisor third-party solicitor. It is important to note that, currently, dealers are generally prohibited under MSRB Rule G-38 from making payments to a third-party solicitor to solicit municipal securities business on behalf of the dealer. However, the draft amendments regarding municipal advisor third-party solicitors would have application to dealers in cases where a dealer retained a municipal advisor third-party solicitor in violation of Rule G-38.

For municipal advisors, draft amended Rule G-37(b)(i)(B)(1) and (2) describe the analogous persons from whom a contribution may trigger a ban on municipal advisory business. They are: the municipal advisor, an MAP of the municipal advisor, and a PAC controlled by either the municipal advisor or an MAP of the municipal advisor. If the municipal advisor retains a municipal advisor third-party solicitor to solicit a municipal entity for business on the municipal advisor's behalf, contributions from the municipal advisor third-party solicitor, an MAP of the municipal advisor third-party solicitor, or a PAC controlled by the municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor also may trigger a ban on municipal advisory business. In that case, the ban would apply both to the municipal advisor that retained the municipal advisor third-party solicitor (the "municipal advisor client") *and* the municipal advisor third-party solicitor.[18]

[18] Under the draft amendments, a contribution by a municipal advisor third-party solicitor may subject it to a ban on municipal advisory business, regardless of whether business is actually later awarded to its dealer client, municipal advisor client or investment adviser client. While the same contribution may also trigger a ban on the applicable business for a dealer client or municipal advisor client, the draft amendments would not trigger a ban on business for an investment adviser that retained the municipal advisor third-party solicitor, as Rule G-37 does not apply to investment advisers. However, in such circumstances, a "two-year timeout" (akin to a ban on business) may apply to the investment adviser under the IA Rule. *See generally* IA Pay to Play Approval Order, *supra* n. 13. Note that the draft amendments are intended to impose at least substantially equivalent standards on municipal advisors to those that the IA Rule imposes on investment advisers, for purposes of the "regulated person" exception in Rule 206(4)-5(a)(i)(A).

Municipal Finance Professionals ("MFPs") and Municipal Advisor Professionals ("MAPs"). Existing Rule G-37 identifies five categories of municipal finance professionals, distinguished by their functions within a dealer. These five categories are any associated person of the dealer who: (A) is primarily engaged in municipal securities representative activities, other than sales activities with natural persons; (B) solicits municipal securities business; (C) is both a municipal securities principal or a municipal securities sales principal and a supervisor of any person described in clause (A) or (B); (D) is a supervisor of any person described in clause (C) up through and including, in the case of a dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the 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; or (E) is a member of the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank) executive or management committee or similarly situated official.

The definition of MFP in draft amended Rule G-37(g)(ii) is substantively unchanged from the existing definition. However, to improve the readability of Rule G-37, reduce the number of internally cross-referenced definitions and avoid repetition, the amendments include terms to name the five types of MFPs. The draft amendments also set forth an analogous definition of "municipal advisor professional" or "MAP" for municipal advisors, with terms to name the five analogous types of MAPs, as follows:

MFP Definition Components	Draft MAP Definition Components
"municipal finance representative"	"municipal advisor representative"
"municipal finance principal"	"municipal advisor principal"
"dealer solicitor"	"municipal advisor solicitor"
"dealer supervisory chain person"	"municipal advisor supervisory chain person"
"dealer executive officer"	"municipal advisor executive officer"

Under draft amended Rule G-37(g)(iii), an MAP is generally any associated person of a municipal advisor who:

(A) is engaged in municipal advisory activities on the firm's behalf, other than a person whose functions are solely clerical or ministerial (a "municipal advisor representative");

(B) is both a municipal advisor principal (as anticipated to be defined in revisions to Rule G-3) and a supervisor of a municipal advisor representative or certain municipal solicitors ("municipal advisor principal");
(C) solicits municipal advisory business on behalf of the municipal advisor, or in the case of a municipal advisor third-party solicitor, solicits business from municipal entities on behalf of dealers, municipal advisors or investment advisers (a "municipal advisor solicitor");
(D) supervises any MAP, up through and including the Chief Executive Officer or similarly situated official (a "municipal advisor supervisory chain person"); or
(E) is a member of the executive or management committee or a similarly situated official (a "municipal advisor executive officer").

Official of a Municipal Entity. Under existing Rule G-37(g)(vi), the term "official of an issuer" currently includes any person who, at the time of the contribution, was 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 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 dealer for municipal securities business by an issuer.

A principal goal of Rule G-37 is to sever the connection between, on the one hand, the making of a political contribution to an official who has the ability to influence the awarding of business to the contributor and, on the other hand, the awarding of the business. With the extension of Rule G-37 to cover municipal advisors, the draft amendments replace the term "official of an issuer" with the new defined term "official of a municipal entity," which takes into account the possibility that an official may have the ability to influence the selection of a dealer but not a municipal advisor, or vice versa.

The draft definition of "official of a municipal entity" includes two types of officials, based on the type of selection influence they may hold: an "official with dealer selection influence" and an "official with municipal advisor selection influence."[19] Although it may be most common that an official of a municipal entity can influence the selection of both dealers and municipal advisors, these separate categories are created to ensure that there is a nexus between the contribution and the awarding of business that gives rise to a sufficient risk of corruption or the appearance of corruption to warrant a

[19] *See* Draft Amended Rule G-37g(xvi).

two-year ban. Thus, for example, a contribution made by a non-municipal advisor dealer to an official with at least dealer selection influence may trigger a ban on municipal securities business for the dealer. However, if that same contribution is made to an official who only has the ability to influence the selection of a municipal advisor, the contribution will not trigger a ban on municipal securities business.

Municipal Securities Business and Municipal Advisory Business. Under existing Rule G-37, a dealer subject to a ban would generally be prohibited from engaging in "municipal securities business" with the relevant issuer. That business is defined as the purchase of a primary offering on other than a competitive bid basis, the offer or sale of a primary offering of municipal securities, providing financial advisory or consultant services with respect to a primary offering on other than a competitive bid basis, and providing remarketing agent services with respect to a primary offering on other than a competitive bid basis.

Draft amended Rule G-37(g)(xii) would include financial advisory or consultant services within the scope of "municipal securities business" only to the extent that they would not cause the dealer to be a municipal advisor within the meaning of Section 15B(e)(4) of the Act and the rules and regulations thereunder. This modification reflects changes under the Dodd-Frank Act, under which many services are defined as municipal advisory services that previously were considered financial advisory or consultant services.

Under draft amended Rule G-37(b)(i)(B), a municipal advisor subject to a ban would generally be prohibited from engaging in "municipal advisory business" with the relevant municipal entity. "Municipal advisory business" means the provision of advice to or on behalf of a municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities and the solicitation of a municipal entity within the meaning of Section 15B(e)(9) of the Exchange Act and the rules and regulations thereunder.[20] Notably, when a municipal advisor third-party solicitor is subject to a ban, it would be prohibited from doing all municipal advisory business with the relevant municipal entity, including soliciting the municipal entity on behalf of *any* dealer, municipal advisor or investment adviser.

[20] The definition of "municipal advisory business" in draft amended Rule G-37(g)(ix) is consistent with the definition of "municipal advisor" in Section 15B of the Act and the rules and regulations thereunder.

Ban on Business for Dealer-Municipal Advisors. The draft amendments to Rule G-37 are specifically tailored to address novel issues arising where a firm is both a dealer and a municipal advisor. These include determining the appropriate scope of a ban on business for such firms when a contribution is made by the dealer-municipal advisor to an official that has both dealer and municipal advisor selection influence, and when a contribution is made from persons or entities associated with one line of the firm's business to an official with influence over the awarding of business to the firm's other line of business. In these circumstances, the draft amendments would subject the firm to a "cross-ban" (either a ban on both municipal securities business and municipal advisory business, in the first instance, or a ban on the only type of business that the official to whom the contribution was made has the ability to influence, in the second instance.)

Under the draft amendments, a dealer-municipal advisor may be subject to a ban on municipal securities business under paragraph (b)(i)(A), a ban on municipal advisory business under paragraph (b)(i)(B), or both under paragraph (b)(i)(C), depending on the type of official to whom the triggering contribution is made. If the official has only dealer selection influence, only the ban on municipal securities business applies; and if the official has only municipal advisor selection influence, only the ban on municipal advisory business applies. If, however, the official has both dealer and municipal advisor selection influence (which may be the most common scenario), bans on municipal securities business and municipal advisory business apply to the dealer-municipal advisor.

To address the possibility of *quid pro quo* corruption, or its appearance, when one line of business of a dealer-municipal advisory firm is awarded business after a contribution is made from persons or entities associated with the other line of business, draft amended Rule G-37(b)(i)(C) would subject the dealer-municipal advisor to an appropriately scoped ban on business. Thus, where a triggering contribution is made to an official with only *dealer* selection influence by specified persons associated with the dealer-municipal advisor in its capacity as a *municipal advisor*, the firm is subject to a ban on municipal securities business. Similarly, where a triggering contribution is made to an official with only *municipal advisor* selection influence by specified persons associated with the dealer-municipal advisor in its capacity as a *dealer*, the firm is subject to a ban on municipal advisory business.

The table below shows the most common persons from whom a contribution may trigger, under the draft amendments, a ban on municipal securities business, municipal advisory business, or both.[21]

Persons From Whom a Contribution May Trigger a Ban on Municipal Securities Business, Municipal Advisory Business, or Both					
Regulated Entity Subject to a Ban	**I. Dealer**	**II. Non-Solicitor Municipal Advisor**	**III. Municipal Advisor Third-Party Solicitor (for purposes of this table, "MATP Solicitor")**	**IV. Dealer-Municipal Advisor (for purposes of this table, "the firm")**	
Contributor	the dealer*	the municipal advisor**	the MATP solicitor**	the firm*	
	an MFP of the dealer*	an MAP of the municipal advisor**	an MAP of the MATP solicitor**	an MFP of the firm*	an MAP of the firm**
	a PAC controlled by the dealer*	a PAC controlled by the municipal advisor**	a PAC controlled by the MATP solicitor**	a PAC controlled by the firm*	
	a PAC controlled by an MFP of the dealer*	a PAC controlled by an MAP of the municipal advisor**	a PAC controlled by an MAP of the MATP solicitor**	a PAC controlled by an MFP of the firm*	a PAC controlled by an MAP of the firm**
	If an MATP solicitor is engaged to solicit municipal securities business on behalf of the dealer, the persons in column III**	If an MATP solicitor is engaged to solicit municipal advisory business on behalf of the municipal advisor, the persons in column III**		If an MATP solicitor is engaged to solicit municipal securities business or municipal advisory business on behalf of the firm, the persons in column III**	
	*under existing Rule G-37 **under the draft amendments to Rule G-37				

Orderly Transition Period. Under the MSRB's interpretive guidance to existing Rule G-37, a dealer that is subject to a ban on municipal securities business with an issuer nonetheless may continue for a limited time to engage in municipal securities business with such issuer, subject to an orderly transition to another entity to perform such business.[22] The interpretive guidance provides that this transition period should be as short a period of

[21] This table is for illustrative purposes and market participants should refer to the draft rule text for complete details.

[22] *See* MSRB Rule G-37 Interpretive Notice – Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G-37 (Feb. 21, 1997). The MSRB would intend all interpretive guidance under existing Rule G-37 to apply to the comparable provisions of the draft amendments applicable to municipal advisors.

time as possible and is intended to give the issuer the opportunity to receive the benefit of the work already provided and to find a replacement to complete the work, as needed.[23]

Draft amended Rule G-37(b)(i)(D) largely codifies and extends to municipal advisors this guidance. Specifically, it permits a dealer or municipal advisor subject to a ban to continue to engage in business to allow for an orderly transition to another entity and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to its client. Consistent with the interpretive guidance, the draft amendments provide that the transition period should be as short a period of time as possible.

Modification of Two-Year Ban. Under draft amended Rule G-37, a ban on municipal securities business or municipal advisory business starts to run, as under the existing rule, from the time that the triggering contribution is made. Draft amended Rule G-37(b)(i)(C), however, modifies the end date of a ban in cases where the dealer or municipal advisor is engaging in municipal securities business or municipal advisory business with the municipal entity at the time of a triggering contribution. In such cases, the ban ends two years after the date on which all of the dealer's or municipal advisor's municipal securities business or municipal advisory business, as applicable, with the municipal entity ceases. This modification may occur where the business is part of a permitted orderly transition period or beyond the scope of the ban according to the existing interpretive guidance under the rule (*e.g.*, the performance of pre-existing issue-specific contractual obligations).[24]

Excluded Contributions. Draft amended Rule G-37(b)(ii) consolidates in one new subsection the types of contributions that do not subject a dealer, under the existing rule, to a ban on business, and extends these policies to municipal advisors. The first exclusion is for *de minimis* contributions, and the second and third exclusions are modifications of the two-year look-back provision that would otherwise apply, as explained below.

First, under existing Rule G-37, contributions made by an MFP to an official for whom the MFP is entitled to vote will not trigger a ban on municipal securities business if such contributions do not, in total, exceed $250 per election. Draft amended Rule G-37(b)(ii)(A) retains this exception for MFPs of

[23] *Id.*

[24] *Id.*

dealers and extends it to the MAPs of all municipal advisors, including the MAPs of municipal advisor third-party solicitors. If a contribution by an MAP of a municipal advisor third-party solicitor meets the *de minimis* exception, neither the municipal advisor third-party solicitor nor the dealer client or municipal advisor client for which it solicited business would be subject to a ban.

According to what is known as the "two-year look-back" provision of existing Rule G-37, a dealer will be subject to a ban on municipal securities business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person before he or she became an MFP of the dealer. The draft amended rule retains the two-year look-back for MFPs and extends it to the MAPs of all municipal advisors (including municipal advisor third-party solicitors).[25] The two-year look-back also applies to the MAPs of municipal advisor third-party solicitors when soliciting business for a dealer or municipal advisor.[26]

The look-back provision is modified under existing Rule G-37 in two situations. In the first situation, contributions by an individual that is an MFP solely based on his or her solicitation activities for the dealer are excluded and do not trigger a ban on municipal securities business for the dealer unless such MFP subsequently solicits municipal securities business from the issuer to whom he or she contributed. Draft amended Rule G-37(b)(ii)(B) retains this exclusion applicable to such MFPs ("dealer solicitors" as defined in draft amended Rule G-37(g)(ii)(C)) and extends it to MAPs that perform a similar solicitation function within a municipal advisory firm ("municipal advisor solicitors" as defined in draft amended Rule G-37(g)(iii)(C)). Thus, under draft amended Rule G-37(b)(ii)(B), a contribution made by a person who is an MFP or MAP solely on the basis of being a dealer solicitor and/or municipal advisor solicitor during the two-year look-back period prior to becoming a dealer solicitor and/or a municipal advisor solicitor will not trigger a ban if such person has not solicited municipal securities business or municipal advisory business from the municipal entity. Draft amended Rule G-37(b)(ii)(B) also makes a technical amendment to clarify that the non-solicitation condition is not required to be met for the contribution to be excluded after two years have elapsed since the making of the contribution.

[25] *See* Draft Amended Rule G-37(b)(i)(A)(1) and (b)(i)(B)(1). The ban on business for the dealer or municipal advisor, like the treatment under the existing rule, would only begin when such individual becomes an MFP or MAP of the dealer or municipal advisor, as applicable.

[26] *See* Draft Amended Rule G-37(b)(i)(A)(2) and (b)(i)(B)(2).

The second situation in which the look-back provision is modified under existing Rule G-37 involves MFPs who have that status solely by virtue of their supervisory or management-level activities. Under existing Rule G-37, contributions by such MFPs are excluded and do not trigger a ban on municipal securities business if such contributions were made more than six months before obtaining the MFP status. Draft amended Rule G-37(b)(ii)(C) retains this exclusion applicable to such MFPs ("municipal finance principals," "dealer supervisory chain persons," and "dealer executive officers" as defined in draft amended Rule G-37(g)(ii)(C)) and extends it to analogous MAPs that have MAP status solely by virtue of their supervisory or management-level activities ("municipal advisor principals," "municipal advisor supervisory chain persons," and "municipal advisor executive officers" as defined in draft amended Rule G-37(g)(iii)(C)). Thus, under draft amended Rule G-37(b)(ii)(C), a contribution by a person who is an MFP or MAP solely on the basis of his or her activities as a municipal finance principal, dealer supervisory chain person, dealer executive officer, municipal advisor principal, municipal advisor supervisory chain person, or municipal advisor executive officer, as applicable, does not trigger a ban if the contribution was made more than six months before obtaining such status.

Prohibition on Soliciting and Coordinating Contributions

Existing Rule G-37(c) prohibits a dealer and an MFP of the dealer from soliciting any person or PAC to make any contribution or coordinating any contributions to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business. It further prohibits a dealer and three of the five categories of MFPs (termed "municipal finance representatives," "municipal finance principals," and "dealer solicitors," under the draft amendments) from soliciting any persons or PAC to make any payment or coordinate any payments to a political party of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Draft amended Rule G-37(c) retains these prohibitions with respect to dealers and the same categories of MFPs and extends the prohibitions to municipal advisors and the analogous categories of MAPs.

Prohibition on Circumvention of Rule

Existing Rule G-37(d) prohibits a dealer and an MFP from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of the ban on municipal securities business or the prohibition on soliciting or coordinating contributions. Draft amended Rule G-37(d) retains this prohibition with respect to dealers and MFPs and extends it to municipal advisors and MAPs.

Public Disclosures of Contributions and Other Information

Existing Rule G-37(e) contains broad public disclosure requirements to facilitate enforcement of Rule G-37 and to promote public scrutiny of dealers' political contributions and municipal securities business. It requires dealers to publicly disclose on Form G-37: (i) non *de-minimis* contributions to officials of an issuer; (ii) payments to political parties of states or political subdivisions; (iii) contributions to bond ballot campaigns; and (iv) information regarding municipal securities business with issuers.

Draft amended Rule G-37(e) retains these disclosure requirements for dealers. For municipal advisors, the disclosure requirements of draft amended Rule G-37(e) are substantially similar to those required of dealers, with one exception for municipal advisor third-party solicitors. Draft amended Rule G-37(e)(i)(C) requires them to list on Form G-37 the names of the third parties on behalf of which they solicited business as well as the nature of the business solicited.

Existing Rule G-37(f) permits dealers to submit additional voluntary disclosures to the Board. The draft amendments to Rule G-37(f) permit municipal advisors also to make voluntary disclosures.

Definitions

Draft amended Rule G-37(g) adds defined terms to make the appropriate provisions of Rule G-37 applicable to municipal advisors and certain of their associated persons and reduce the number of cross-references within the rule text. The draft defined terms applicable solely to municipal advisors are generally analogous to the defined terms applicable to dealers in existing Rule G-37.

Operative Date

Draft amended Rule G-37(h) provides that the bans on business under the draft amended rule will arise only from contributions made after SEC approval and effectiveness of the draft amendments. However, with respect to dealers and dealer-municipal advisors that are subject to the requirements of existing Rule G-37, any ban on municipal securities business that was already triggered before the effective date of the draft amendments will remain in effect and end according to the provisions of Rule G-37 as in effect at the time of the contribution.

Exemptions

Existing Rule G-37 provides two mechanisms through which a dealer may be exempted from a ban on municipal securities business. First, under existing Rule G-37(i), a registered securities association of which a dealer is a

member, or another appropriate regulatory agency may, upon application, exempt a dealer after consideration of a detailed list of factors. Second, under existing Rule G-37(j), a dealer may avail itself of an automatic exemption (*i.e.*, without the need to apply to a third party) based upon several specified conditions (generally, discovery within four months of the date of contribution and a return of the contribution, which may not exceed $250, within sixty days of its discovery). But a dealer may use no more than two automatic exemptions per twelve-month period, and may use no more than one for contributions relating to the same person, regardless of the time period.

The draft amendments extend these provisions to all municipal advisors, including municipal advisor third-party solicitors. Thus, for example, when a contribution made by a municipal advisor third-party solicitor soliciting business for a municipal advisor client subjects them both to a ban on municipal advisory business, each may seek to avail itself of an automatic exemption, but each would be required to separately meet the specified conditions. The use of an automatic exemption counts against a regulated entity's allotment per twelve-month period, regardless of whether the contribution that triggered the ban was made by that regulated entity or by a retained municipal advisor third-party solicitor.

Draft Amendments to Rules G-8 and G-9 and Forms G-37 and G-37x

The draft amendments to Rule G-8 (books and records) and Rule G-9 (preservation of records) make the related and necessary changes to those rules based on the draft amendments to Rule G-37. The draft amendments to Rule G-8 add a new subsection (h)(iii) to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons as currently exist for dealers. The draft amendments to Rule G-9 generally require municipal advisors to preserve for six years the records required to be made by the draft amendments to Rule G-8, consistent with the analogous retention requirement in Rule G-9 for dealers. With respect to dealers, minor conforming draft amendments to Rule G-8(a)(xvi) reflect the draft amendments to Rule G-37 regarding dealers, such as the defined terms included in the revised MFP definition. The draft amendments to Forms G-37 and G-37x permit the forms to be used by both dealers and municipal advisors to make the disclosures required by draft amended Rule G-37(e). Dealer-municipal advisors may make all required disclosures on a single Form G-37.

Economic Analysis

The Board has historically given careful consideration to the costs and benefits of its new and amended rules. The Board recently adopted a policy to more formally integrate economic analysis into its rulemaking process. The policy, according to its transitional terms, does not apply to the Board's consideration of the draft amendments to Rule G-37, as the rulemaking process for the draft amendments began prior to the adoption of the policy.

The policy can still be used, however, to guide consideration of the draft amendments. According to the policy, prior to proceeding with a rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted will, in its judgment, meet that need. During the same timeframe, the Board also should identify the data and other information it would need in order to make an informed judgment about the potential economic consequences of the rule change, make a preliminary identification of both relevant baselines and reasonable alternatives to the rule change, and consider the potential benefits and costs of the rule change and the main alternative regulatory approaches.

1. **The need for the draft amendments to Rule G-37 and how the draft amendments will meet that need.**

The need for the draft amendments to Rule G-37 arises primarily from the Dodd-Frank Act. Under the Dodd-Frank Act, the MSRB's mandate expanded to the oversight of municipal advisors and the MSRB is granted certain regulatory authority over municipal advisors.[27] As noted previously, the MSRB is in the process of developing a comprehensive regulatory framework for municipal advisors and their associated persons. The draft amendments to Rule G-37 are consistent with and further the purposes of the Exchange Act by addressing the potential for "pay to play" practices by municipal advisors that can affect the integrity of the municipal securities market, increase costs borne by issuers and investors, and create artificial barriers to competition. The draft amendments would create a "pay to play" regime for municipal advisors comparable to others in the financial services industry. They would do so by generally extending to municipal advisors the core standards of existing Rule G-37, including prohibiting municipal advisors from engaging in municipal advisory business with a municipal entity after the making of certain contributions to an official of such entity; prohibiting a

[27] *See* Section 15B(a)(1)(B) and (a)(5) of the Exchange Act; *see also* Section 15B(b)(2) of the Exchange Act.

municipal advisor and certain of its associated persons from soliciting or coordinating any contributions to an official with which the municipal advisor is engaging or seeking to engage in municipal advisory business or soliciting or coordinating payments to a political party of a state or locality where the municipal advisor is engaging or seeking to engage in such business; and requiring the public disclosure of political contributions and other information.

There is a need for the draft amendments to Rule G-37 to curb *quid pro quo* corruption, or the appearance of such corruption, in the awarding of a municipal entity's business to either a municipal advisor or certain third-party clients of a municipal advisor third-party solicitor. Such "third-party clients" include brokers, dealers, municipal securities dealers, municipal advisors and investment advisers that do not control, are not controlled by, and are not under common control with the municipal advisor third-party solicitor. The political contributions of a municipal advisor may influence or appear to influence the selection of municipal advisors or the third-party clients of a municipal advisor third-party solicitor when such contributions are made to an official of a municipal entity with the ability to influence the awarding of business to the municipal advisor or its third-party clients. There also is a need for transparency regarding the political contributions made by municipal advisors to allow public scrutiny of such political contributions and the business awarded either to the municipal advisor or a third-party client of a municipal advisor third-party solicitor.

"Pay to play" practices may interfere with the process by which municipal advisors or the third-party clients of a municipal advisor third-party solicitor are chosen since the receipt of such contributions might influence an official of a municipal entity to award business based, not on merit, but on the contributions received. Municipal advisors, dealers and investment advisers play a valuable role in the municipal market, in the course of providing financial and related advice or in underwriting the securities and examining the statements made by issuers in connection with an offering. The mere perception of *quid pro quo corruption* in the selection of such persons diminishes investor confidence in the ability or willingness of a dealer, municipal advisor or investment adviser to faithfully fulfill their obligations to municipal entities and the investing public. Actual *quid pro quo* corruption also raises artificial barriers to entry and detracts from fair competition among municipal advisors and the third-party clients of municipal advisor third-party solicitors.

Quid pro quo corruption or the appearance of such corruption in connection with the awarding of municipal business may also lead to increased costs

borne by municipal entities, and ultimately by investors in the municipal securities issued by those municipal entities.[28] Regulated entities and investment advisers compete with each other in several ways, including through the quality of services offered and the pricing of those services. There is a greater risk that a municipal advisor (or third-party client of a municipal advisor third-party solicitor) that is selected, not based on its merits or qualifications, but because of political contributions, may be less qualified to provide quality services to the municipal entity. Acting on inappropriate advice or an erroneous belief that the regulated entity or investment adviser is providing quality services may result in the municipal entity making unnecessarily costly decisions. Additionally, the municipal entity might not receive such services at the most competitive price because the cost of those services may not have been a sufficiently important factor in the selection of the municipal advisor. Even in cases where the services provided by a regulated entity or investment adviser that was chosen on the basis of contributions are, in fact, quality services, the mere perception of *quid pro quo* corruption in the selection of such persons causes investors to call into question the qualifications of such service providers. This may have the effect of diminishing investor confidence in the integrity of the municipal securities market, which may lead to investor reticence, illiquidity and higher costs of capital for municipal entities.

The need for the draft amendments arises in a more specific way from the Dodd-Frank Act. The relevant legislative history shows that, in enacting the Dodd-Frank Act, Congress was concerned with the previously unregulated conduct of municipal advisors.[29] Also according to the relevant legislative history, Congress granted rulemaking authority over municipal advisors to the MSRB rather than the SEC in part due to the importance of ensuring common standards, recognizing that the MSRB already "has an existing, comprehensive set of rules on key issues such as pay-to-play . . . ."[30] The SEC has recognized, in its adoption of a final registration rule, that the regulation of municipal advisors and their advisory activities is intended to address

[28] As noted above, under Section 15B(b)(2)(C) of the Exchange Act, the MSRB is charged by Congress to adopt rules to "remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products."

[29] Senate Report, at 38.

[30] *Id.* at 149.

problems observed with the conduct of some municipal advisors, including "pay to play" practices.[31]

Additionally, in subjecting previously unregulated municipal advisory activities to federal regulation in the Dodd-Frank Act, Congress can be understood to have contemplated a regulatory regime for municipal advisors that was comparable to the regulatory regimes for other entities and persons in the financial services industry. There are currently three major "pay to play" regulatory regimes in the financial services industry: Rule G-37 for dealers; the IA Rule for investment advisers; and the Swap Dealer Rule for swap dealers. Each of the regulated entities under these "pay to play" regimes provides some sort of financial advice to state or local governments. Creating a "pay to play" rule for municipal advisors helps ensure that the MSRB's regulatory regime for municipal advisors is comparable to other regulatory regimes within the financial services industry. Furthermore, the fact that regulatory authorities in other parts of the financial services industry have identified a need for "pay to play" regulations corroborates the need for comparable regulation to be included in the regulatory regime for municipal advisors. Indeed, because some dealers also are municipal advisors, such firms could be at a competitive disadvantage compared with non-dealer municipal advisors in the absence of the draft amendments.

Finally, the need for the draft amendments arises from the fact that investment advisers, some of which are also municipal advisors, are subject to "pay to play" regulation under the IA Rule. In the absence of a "pay to play" rule applicable to all municipal advisors, some municipal advisors (who are also investment advisers) could be at a competitive disadvantage compared with municipal advisors who are not also acting as investment advisers.

The draft amendments to Rule G-37 would address *quid pro quo* corruption and the appearance of such corruption in connection with the awarding of municipal securities business and municipal advisory business. By targeting "pay to play" practices, the draft amendments would level the playing field upon which municipal advisors (and the third-party clients of municipal advisor third-party solicitors) compete because all such persons would be subject to the same requirements. Further, the draft amendments' disclosure requirements would serve to give regulators and the market, including investors, transparency regarding the political contributions of municipal

[31] MA Registration Adopting Release at 67469; *see id.* at 67475 nn. 104-6 and accompanying text (discussing relevant enforcement actions).

advisors which may promote market integrity and investor confidence. The combined effect of the ban on business provisions and the disclosure provisions would serve to sever the appearance of *quid pro quo* corruption in the municipal market. The draft amendments would also subject municipal advisors to a "pay to play" regulatory regime comparable to others in the financial services industry.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-37 can be measured.

To evaluate the potential impact of the draft amendments' requirements, a baseline, or baselines, must be established as a point of reference. The analysis proceeds by comparing the expected state with the draft amendments to Rule G-37 in effect to the baseline state prior to the draft amendments taking effect. The economic impact of the draft amendments is measured as the difference between these two states.

For the subset of municipal advisors that are dealers, the existing requirements of MSRB Rule G-37 serve as a baseline. For this subset of municipal advisors, the requirements of the draft amendments are substantially similar to the baseline Rule G-37 requirements.

An additional baseline applies to municipal advisors that are also registered as investment advisers and subject to the requirements of the IA Rule. The IA Rule prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to certain elected officials or candidates.[32] The IA Rule provides a *de minimis* exception for contributions to candidates for whom the contributor is entitled to vote, which is similar to current Rule G-37 and the draft amendments to be applied to municipal advisor personnel. Additionally, the IA Rule prohibits an advisor from soliciting or coordinating contributions to certain elected officials or candidates or payments to political parties if the advisor is providing or seeking government business, which is consistent with current Rule G-37 and the draft amendments applicable to municipal advisors.

Another baseline that can be used to evaluate the impact of the draft amendments to Rule G-37 is the Dodd-Frank Act itself which subjects municipal advisors to regulation by the MSRB and requires the MSRB to adopt rules (to which municipal advisors and dealers are subject) that are,

[32] *See* IA Pay to Play Approval Order at 41017.

among other things, designed to protect investors, municipal entities, obligated persons and the public interest. As noted, the legislative history of the Dodd-Frank Act indicates that Congress was concerned with the previously unregulated activities of municipal advisors, including "pay to play" conduct. In subjecting municipal advisors to regulation in the Dodd-Frank Act, Congress can be understood as having contemplated a regulatory regime for municipal advisors comparable to the regulatory regimes for other entities and persons in the financial services industry, at least with respect to this fundamental measure against *quid pro quo* corruption or its appearance in the municipal market.

Other baselines include federal election laws, state and federal anti-bribery and anti-corruption laws, and state "pay to play" laws.

3. Identifying and evaluating reasonable alternative regulatory approaches.

One alternative to the draft amendments to Rule G-37 would be for the MSRB not to engage in additional rulemaking, and thus, not seek to address the potential for "pay to play" activities by municipal advisors. In the absence of regulation, municipal advisors and the third-party clients of municipal advisor third-party solicitors would continue to compete for business with others where the outcome of that competition, in some instances, could be influenced by political contributions as opposed to merit only. In these instances, the more qualified professional may not be selected, potentially leading to increased costs borne by the municipal entity, a potential reduction of revenues available to be dedicated elsewhere for the benefit of the municipal entity's taxpayers, and ultimately higher costs borne by investors in the municipal entity's municipal securities.

By not adopting the draft amendments to Rule G-37, the benefits of the draft amendments that are designed to protect municipal entities could be lost. The potential for manipulation of the market for the services of municipal advisors and the third-party clients of municipal advisor third-party solicitors through payments in the form of political contributions would remain. Also, without the draft amendments to Rule G-37, the competitive playing field for such professionals would remain uneven, giving the professionals who engage in "pay to play" practices an unfair competitive advantage. Finally, while municipal advisors would continue to compete for business with other municipal advisors, the outcome of that competition, even if not actually influenced by political contributions as opposed to merit, could appear to be so influenced.

Another alternative would be to consider whether the requirements for municipal advisors should be organized as a separate rule instead of being incorporated into Rule G-37, which currently applies only to dealers. Although there are significant differences in the activities of municipal advisors and the typical core activities of dealers, the manner by which political contributions for the two groups can be regulated will be similar, which supports having a single rule. Moreover, as many municipal advisors are familiar with the application, structure and exceptions set forth in current Rule G-37, the costs of implementation and compliance may be lower than if a separate rule were adopted.

A further alternative to consider is to not provide for any automatic exemptions for a municipal advisor that is subject to a ban on municipal advisory business under the draft amendments to Rule G-37. The draft amendments include an exemption for a regulated entity, including a municipal advisor, that discovers a prohibited contribution within four months of the contribution, where the contribution is $250 or less, and where the contribution is returned within sixty calendar days of the date of discovery. A regulated entity is entitled to no more than two automatic exemptions per twelve-month period and no more than one automatic exemption can be applied to the same covered professional regardless of the time period. Without an automatic exemption provision, the cost associated with inadvertent violations would be very high, which would likely lead regulated entities to respond by devoting more resources to more precise and costly compliance programs to prevent such breeches. With an automatic exemption, the risks of an inadvertent violation remain the same, but the costs of a *de minimis* number of such inadvertent contributions are substantially less.

Additional alternatives to consider are whether to ban a regulated entity immediately from engaging in municipal advisory business with the municipal entity or to at least ban compensation immediately upon the triggering of a ban on business. Under the IA Rule, for example, an investment adviser may continue to provide services to the state or local government, notwithstanding the triggering of a ban on business, for a reasonable period of time, determined primarily by the amount of time a client might need in good faith to find a successor. However, the investment adviser may not be compensated for such services.

Under the draft amendments to Rule G-37, a regulated entity may continue to provide compensated services to a municipal entity, subject to an orderly transition period. The orderly transition period is intended to avoid disruption to the municipal entity and give the municipal entity the

opportunity to receive the benefit of the work already provided by the municipal advisor. It also gives the municipal entity time to find a replacement to complete the work. An alternative to this compensated orderly transition period is the approach taken under the IA Rule.

The MSRB also can invite public comment to suggest additional regulatory alternatives to be considered.

4. **Assessing the benefits and costs, both quantitative and qualitative, of the draft amendments to Rule G-37 and the main alternative regulatory approaches.**

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the rule with the draft amendments fully implemented, against the context of the economic baselines discussed above.

At the outset, the MSRB notes it is currently unable to fully quantify the economic effects of the draft amendments to Rule G-37 that may be amenable to quantification, because the information necessary to provide reasonable estimates is not available.

Benefits

The draft amendments to Rule G-37, based on preliminary analysis, will yield several important direct and indirect benefits that will likely be similar to the significant benefits provided by Rule G-37 as it applies to dealers. In its application to dealers, Rule G-37 has been widely viewed as effective in significantly curbing "pay to play" practices, a benefit the SEC articulated in its adopting release for the IA Rule.[33] In addition, it is significant that the SEC and the CFTC both have determined that similar restrictions should be put in place to address and curb the giving of political contributions as a *quid pro quo* for business.

Overall, the amendments to Rule G-37 are intended to reduce the potential influence of political contributions in the market for allocating the services of regulated entities and third-party clients of a municipal advisor third-party solicitor. A benefit of the draft amendments is that, compared to the

[33] *See* IA Pay to Play Approval Order at 41020 (discussing the rationale for modeling the SEC's "pay to play" rule for investment advisers on Rule G-37); *see also id.* at n. 101 and accompanying text (citing sources, including the MSRB, who believe that Rule G-37 has been effective).

baseline state, it is more likely that municipal advisors and the third-party clients of a municipal advisor third-party solicitor will be selected based on merit and cost, rather than on contributions to political officials. By serving to level the playing field upon which municipal advisors compete for business and solicit business for others, the draft amendments to Rule G-37 will help curb manipulation of the market for municipal advisory services (and to a lesser degree, municipal securities business and investment advisory services). The amendments would also remove or reduce artificial barriers to competition for municipal advisors and the third-party clients of municipal advisor third-party solicitors.

In the case of business awarded to municipal advisors, the resulting likely benefit of the draft amendments to municipal entities is the receipt of higher-quality advice and lower costs in procuring municipal advisory business services. In the case of business awarded to a third-party client that is a dealer or investment adviser, the resulting likely benefit to the municipal entity should be similar–the receipt of higher-quality advice and lower costs to obtain the municipal securities business services or investment advisory services, as applicable.

Investors in municipal bond offerings should also benefit from the draft amendments to Rule G-37. As noted above, even the perception of *quid pro quo* corruption in connection with the awarding of municipal securities or municipal advisory business can have a negative impact on market integrity and investor confidence. By addressing such practices, the draft amendments may lead to increased market integrity and investor confidence.

The draft amendments to Rule G-37 also require municipal advisors to publicly disclose on Form G-37 certain political contributions made by the municipal advisor and certain associated persons. Pursuant to the draft amendments, regulated entities are required to disclose on Form G-37 detailed information about certain contributions to officials of municipal entities and bond ballot campaigns. Draft amended Form G-37 also requires disclosure of the municipal entities with which the regulated entity has engaged in municipal securities business or municipal advisory business during the calendar quarter. A principal benefit of this public disclosure is that the information will allow public scrutiny of political contributions and the municipal advisory business of a municipal advisor. Public disclosure of the information provided on Form G-37 will also assist regulators charged with examining for compliance with, and enforcing, Rule G-37.

Costs

Our analysis of the potential costs does not consider all of the costs associated with the draft amendments, but instead focuses on the incremental costs attributable to them that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the draft amendments to isolate the costs attributable to the incremental requirements of the draft amendments.

The costs associated with the requirements of the draft amendments to Rule G-37 will be most pronounced as compliance programs are implemented for the first time. These start-up costs may be significant for some market participants. These costs may include seeking the advice of compliance and legal professionals. In addition, once compliance programs are implemented, regulated entities will incur recurring costs of maintaining ongoing programs. Start-up compliance costs likely will disproportionately affect non-dealer municipal advisors since dealer-municipal advisors should already have established compliance programs that they can modify or revise.

The costs associated with the draft amendments to Rule G-37 may fall disproportionately on small municipal advisory firms, including sole proprietorships. Small firms, however, will necessarily have fewer personnel whose contributions would be addressed by the draft amendments, and can reasonably be expected to have relatively fewer municipal advisory engagements than larger firms.

Based on municipal advisor registrations, MSRB staff estimates that, as of July 15, 2014, 713 registered non-dealer municipal advisory firms would be affected by the draft amendments to Rule G-37. At this time, it is unknown how many individual municipal advisors are registered with these 713 firms. However, MSRB staff estimates that this information will be available to the MSRB in late 2014 or early 2015, once information pertaining to individual municipal advisors is reported to the SEC and the assessments for such individual municipal advisors are paid to the MSRB.[34]

The costs associated with implementing the draft amendments can be initially gauged from SEC estimates of the costs of implementing "pay to

[34] Under the SEC's municipal advisor registration regime, each firm must file a Form MA-I with respect to each natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf, including employees of the firm. Forms MA-I should be filed with the SEC by the end of October, 2014, according to the SEC's phased-in compliance schedule.

play" rules for investment advisers. However, it is worth noting that these estimates of compliance costs may be substantially different for municipal advisory firms, since even the largest of these firms are typically much smaller than the largest investment advisory firms. Therefore, the estimates falling in the lower end of the SEC's cost range are likely to be the most applicable to estimating the costs associated with implementing the draft amendments. These estimates can provide some useful information until more refined estimates may be obtained through the public comment process.

In the adopting release for the IA Rule, the SEC estimated that the range of costs would be between 8 hours and 250 hours to establish policies and procedures to comply with the rule. The SEC also estimated ongoing compliance with the IA rule to require between 10 and 1,000 hours annually. In addition, the SEC estimated that firms may incur one-time costs to establish or enhance current systems to assist in their compliance with the IA Rule. The SEC estimated that these system costs could range from the tens of thousands of dollars for simple reporting systems to hundreds of thousands of dollars for complex systems used by large investment advisory firms.

Effect on Competition, Efficiency and Capital Formation

It is possible that the costs associated with the requirements of the draft amendments to Rule G-37 relative to the baseline may lead some municipal advisors to consolidate with other municipal advisors. For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the draft amendments to Rule G-37. However, as the SEC recognized in its final rule on registration of municipal advisors, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), the consolidation of municipal advisors, or the lack of new entrants into the market.[35]

As the SEC recognized in its adopting release for the IA Rule, the efficient allocation of advisory business may be enhanced when it is awarded to investment advisers that compete on price, quality of performance and service and not on the influence of political contributions. It is a similar case with the awarding of municipal advisory business to municipal advisors and municipal securities business to dealers. The SEC also noted in the same

[35] *See* MA Registration Adopting Release at 67608.

release that investment adviser firms, and particularly smaller investment advisory firms, will be able to compete based on merit rather than their ability or willingness to make political contributions. The SEC's reasoning is equally applicable to the potential impact on municipal advisors and dealers of the draft amendments to Rule G-37. A merit-based process may result in a better allocation of professional engagements, compared to the baseline state. Under a merit-based selection process, regulated entities and investment advisers will compete on the basis of the quality of services provided and competitiveness of their fees, and their selection based on the influence of political contributions, of such appearance, will be curbed.

General Matters

In addition to any other subject which commenters may wish to address related to the draft amendments to Rule G-37 and the draft amendments to Rules G-8 and G-9 and Forms G-37 and G-37x, the MSRB seeks public comment on the specific questions below. In particular, the MSRB requests public comment on the potential economic consequences that may result from the adoption of the draft amendments to Rules G-37, G-8 and G-9 and Forms G-37 and G-37x. The MSRB welcomes information regarding the potential to quantify likely benefits and costs. In addition, the MSRB requests comment to help identify the potential benefits and costs of any regulatory alternatives suggested by commenters. Commenters are encouraged to provide statistical, empirical, and other data that may support their views and/or support or refute the views or assumptions contained in this request for comment.

The MSRB specifically invites commenters to address the following questions:

1) How prevalent are "pay to play" practices by municipal advisors in the municipal securities market? What is the effect of real or perceived "pay to play" practices by municipal advisors on the municipal securities market? Please provide specific examples of "pay to play" practices of which you are aware involving municipal advisors due to judicial actions, press accounts, experience or otherwise.

2) Do market participants agree that the types of "pay to play" practices or the potential for "pay to play" practices that Rule G-37 was designed to address also occur or potentially may occur in connection with municipal advisors seeking business for themselves or soliciting business on behalf of dealers, other municipal advisors and investment advisers?

3) Do the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors, while appropriately accommodating for the differences between these regulated entities? If not, where are differences in treatment warranted that are not reflected in the draft amendments? Conversely, do the draft amendments overemphasize the differences between the regulated entities in a way that is not warranted or desirable?

4) Do commenters agree that the requirements of Rule G-37 have been effective in combating corruption or the appearance of corruption in connection with the awarding of municipal securities business to dealers?

5) Does the consolidation into a single rule of the "pay to play" provisions that apply to dealers and the draft provisions that would apply to municipal advisors aid in or detract from understanding the rule and the parallels between the "pay to play" regimes for dealers and municipal advisors?

6) Are the various baselines proposed to be used appropriate baselines? Are there other relevant baselines that the MSRB should consider?

7) If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?

8) Are the recordkeeping and disclosure requirements that apply to dealers in existing Rule G-37 and the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain and make publicly available information that is relevant for the purposes of Rule G-37? Are there additional costs or benefits to the recordkeeping or disclosure obligations that the MSRB should consider?

9) What would be the effect of draft amended Rule G-37 for dealers that have instituted long-standing compliance programs? Do dealers anticipate that any of the possible changes to Rule G-37 may increase or decrease either the occurrence of, or the perception of, "pay to play" practices in the municipal securities market?

10) What alternative methods should the MSRB consider in addressing the potential for "pay to play" practices by municipal advisors?

11) Is the scope of persons from whom a contribution may trigger a ban on municipal securities business or municipal advisory business under the draft amendments appropriate in light of the purposes of draft amended Rule G-37?

12) Are the contributions that would not result in a ban on municipal securities business or municipal advisory business (the "excluded contributions") under the draft amendments appropriate in light of the expanded scope of persons from whom a contribution may trigger a ban?

13) In practice, do municipal advisor third-party solicitors retain other municipal advisor third-party solicitors to assist them in soliciting an engagement for municipal securities business, municipal advisory business or investment advisory services?

14) Is the cross-ban applicable to dealer-municipal advisors in certain circumstances appropriate? Do commenters believe that a contribution from persons or entities associated with one line of business of a dealer-municipal advisory firm (*i.e.*, the municipal securities or the municipal advisory line of business) and the awarding of business to the other line of business within the same firm constitute *quid pro quo* corruption or give rise to the appearance thereof?

15) In the draft amendments, the term "official of a municipal entity" includes two types of officials: "officials with dealer selection influence" and "officials with municipal advisor selection influence." Are there instances where an official of a municipal entity has the ability to influence the selection of a dealer, but not influence the selection of a municipal advisor? Are there instances where an official of a municipal entity has the ability to influence the selection of a municipal advisor, but not influence the selection of a dealer?

16) Is the standard for the length of the orderly transition period appropriate for both dealers and municipal advisors? Is the extension of this standard to municipal advisors sufficient to permit a municipal advisor to act in a manner that is consistent with its fiduciary duty to its municipal entity clients? Would the orderly transition period cause any undue hardship to a dealer's or municipal advisor's municipal entity client?

17) Do commenters agree that it is appropriate to permit dealers and municipal advisors subject to a ban on municipal securities business or municipal advisory business to receive compensation during the orderly transition period?

18) Do commenters agree or disagree that in cases where the dealer or municipal advisor is engaging in municipal securities business or municipal advisory business with the municipal entity at the time of a triggering contribution, the ban on municipal securities business or municipal advisory business should end two years after the date on which all of the dealer's or municipal advisor's applicable business with the municipal entity ceases?

August 18, 2014

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Text of Proposed Amendments[36]

Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

(a) *Purpose*. The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities ~~industry~~market are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors, municipal entities, obligated persons and the public interest by:

(i) prohibiting brokers, dealers ~~and~~, municipal securities dealers (collectively, "dealers") and municipal advisors from engaging in municipal securities business and municipal advisory business with ~~issuers~~municipal entities if certain political contributions have been made to officials of such ~~issuers~~municipal entities; and

(ii) requiring ~~brokers, dealers and municipal securities dealers~~dealers and municipal advisors to disclose certain political contributions, as well as other information, to allow public scrutiny of such political contributions and the municipal securities business or municipal advisory business of ~~a broker, dealer or municipal securities dealer~~dealers and municipal advisors.

(b) *Ban on Municipal Securities Business or Municipal Advisory Business; Excluded Contributions*.

[36] Underlining indicates new language; strikethrough denotes deletions.

(i) *Two-Year Ban.*

(A) *Brokers, Dealers and Municipal Securities Dealers.* No ~~broker, dealer or municipal securities dealer~~dealer shall engage in municipal securities business with ~~an issuer~~a municipal entity within two years after ~~any~~a contribution to an official of such ~~issuer~~municipal entity who is an official with dealer selection influence, as defined in paragraph (g)(xvi)(A), made by:

~~(A)~~(1) the ~~broker, dealer or municipal securities dealer~~dealer; ~~(B) any~~a municipal finance professional ~~associated with such broker, dealer or municipal securities dealer~~of the dealer; or ~~(C) any~~a political action committee controlled by ~~the broker, dealer or municipal securities dealer~~either the dealer or ~~by any~~a municipal finance professional of the dealer; or

(2) a municipal advisor that is engaged to be a municipal advisor third-party solicitor, as defined in paragraph (g)(x) of this rule, of such municipal entity on behalf of the dealer; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor.

(B) *Municipal Advisors*. No municipal advisor shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity who is an official with municipal advisor selection influence, as defined in paragraph (g)(xvi)(B), made by:

(1) the municipal advisor; a municipal advisor professional of the municipal advisor; or a political action committee controlled by either the municipal advisor or a municipal advisor professional of the municipal advisor; or

(2) a municipal advisor that is engaged to be a municipal advisor third-party solicitor, as defined in paragraph (g)(x) of this rule, of such municipal entity on behalf of the municipal advisor in paragraph (b)(i)(B)(1) above; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor.

(C) *Cross-Bans for Dealer Municipal Advisors*. In the case of a regulated entity that is both a dealer and a municipal advisor, the prohibition on municipal securities business in paragraph (b)(i)(A) shall also apply in the case of a contribution to an official with dealer selection influence by a municipal advisor professional of the municipal advisor, a political action committee controlled by a municipal advisor professional of the municipal advisor, or any entity or natural person described in Rule G-37(b)(i)(B)(2); and the prohibition on municipal advisory business in paragraph (b)(i)(B) shall apply in the case of a contribution to an official with municipal advisor selection influence by a municipal finance professional of the dealer, a political action committee controlled by a municipal finance professional of the dealer, or any entity or natural person described in Rule G-37(b)(i)(A)(2).

(D) *Orderly Transition Period.* A dealer or municipal advisor subject to a prohibition under subsection (b)(i) of this rule may, notwithstanding those provisions, continue to engage in municipal securities business and/or municipal advisory business, as applicable, to allow for an orderly transition to another entity to engage in such business and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to the municipal entity; provided, however, that such transition period should be as short a period of time as possible.

(E) *Modification of Two-Year Ban.* In the case of a dealer engaged in municipal securities business with the relevant municipal entity at the time of the contribution resulting in a prohibition under paragraph (b)(i)(A) of this rule or a municipal advisor engaged in municipal advisory business with the relevant municipal entity at the time of the contribution resulting in a prohibition under paragraph (b)(i)(B) of this rule, such prohibition shall begin on the date of the contribution and end two years after the date on which all of the dealer's or municipal advisor's municipal securities business or municipal advisory business, as applicable, with the municipal entity has ceased.

(ii) *Excluded Contributions.* A contribution to an official of a municipal entity will not subject a dealer or municipal advisor to a ban on business under section (b) of this rule if the contribution meets the specific conditions of an exclusion set forth below.

(A) *Voting Right/De Minimis Contribution.* The contribution is made by a municipal finance professional or municipal advisor professional who is entitled to vote for the official of the municipal entity and the contribution and any other contribution made to the official of the municipal entity by such person in total do not exceed $250 per election.

~~provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of $250 by any municipal finance professional to each official of such issuer, per election.~~

(B) *Contributions Made Before Becoming a Dealer Solicitor or Municipal Advisor Solicitor.* The contribution is made by a natural person who, at the time of the contribution was not a municipal finance professional or municipal advisor professional; is a municipal finance professional, or municipal advisor professional, or both, solely on the basis of being a dealer solicitor and/or municipal advisor solicitor; and, since becoming a dealer solicitor and/or municipal advisor solicitor has not solicited the municipal entity; provided, however, that this non-solicitation condition is not required for this exclusion after two years have elapsed since the making of the contribution.

~~(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.~~

(C) *Contributions Made by Certain Persons More Than Six Months Before Becoming a Municipal Finance Professional or Municipal Advisor Professional.* The contribution is made by a person who is either or both of the following: (1) a municipal finance professional solely based on activities as a municipal finance principal, dealer supervisory chain person, or dealer executive officer, and the contribution was made more than six months before becoming a municipal finance professional, or; (2) a municipal advisor professional solely based on activities as a municipal advisor principal, municipal advisor supervisory chain person, or municipal advisor executive officer, and the contribution was made more than six months before becoming a municipal advisor professional.

~~(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the period beginning six months prior to the individual becoming a municipal finance professional.~~

(c) *Prohibition on Soliciting and Coordinating Contributions*.

(i) No ~~broker, dealer or municipal securities dealer~~ dealer or ~~any~~ municipal finance professional of the ~~broker, dealer or municipal securities dealer~~dealer or municipal advisor or municipal advisor professional of the municipal advisor shall solicit any person~~,~~ (including but not limited to any affiliated entity of the ~~broker, dealer or municipal securities dealer,~~dealer or municipal advisor or political action committee) to make any contribution, or ~~shall~~ coordinate any contributions, to an official of ~~an issuer~~ a municipal entity with which the ~~broker, dealer or municipal securities dealer~~dealer or municipal advisor is engaging, or is seeking to engage in municipal securities business or municipal advisory business, as applicable.

(ii) No ~~broker, dealer or municipal securities dealer~~ dealer, municipal advisor, municipal finance representative, municipal advisor representative, dealer solicitor, municipal advisor solicitor, municipal finance principal or municipal advisor principal ~~or any individual designated as a municipal finance professional of the broker, dealer or municipal securities dealer pursuant to subparagraphs (A), (B), or (C) of paragraph (g)(iv) of this rule~~ shall solicit any person~~,~~ (including but not limited to any affiliated entity of the ~~broker, dealer or municipal securities dealer,~~ dealer or municipal advisor or political action committee) to make any payment, or ~~shall~~ coordinate any payments, to a political party of a state or locality where the ~~broker, dealer or municipal securities dealer~~dealer or municipal advisor is engaging, or is seeking to engage in municipal securities business or municipal advisory business, as applicable.

(d) *Prohibition on Circumvention of Rule*. No ~~broker, dealer or municipal securities dealer~~dealer, municipal advisor, ~~or any~~ municipal finance professional or municipal advisor professional shall, directly or

indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e) *Required Disclosure to Board.*

(i) ~~Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall,~~Each dealer and municipal advisor must send to the Board by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) ~~send to the Board~~ Form G-37 ~~setting forth~~containing, in the prescribed format, the following information:

(A) for contributions to officials of ~~issuers~~municipal entities (other than a contribution made by a municipal finance professional ~~or a~~, municipal advisor professional, non-MFP executive officer or non-MAP executive officer to an official of ~~an issuer~~a municipal entity for whom such person is entitled to vote if all contributions by such person to such official of ~~an issuer~~a municipal entity, in total, do not exceed $250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional ~~or a~~, municipal advisor professional, non-MFP executive officer or non-MAP executive officer to a political party of a state or ~~a~~ political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed $250 per year) made by the persons and entities described in ~~subclause (2) of this clause (A):~~paragraph (e)(i)(A)(2) below:

(1) listing by state, the name and title (including any city/county/state or political subdivision) of each official of ~~an issuer~~a municipal entity and political party ~~receiving contributions or payments~~ that received a contribution or payment during such calendar quarter~~, listed by state~~;

(2) the contribution or payment amount made and the contributor category for ~~of each of the following persons and entities making~~ such contributions or payments during such calendar quarter, as specified below:

(a) If a regulated entity, the identity of the contributor as a~~the broker, dealer or municipal securities dealer~~ dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a ~~each~~ municipal finance professional~~; (c) each~~, municipal advisor professional, non-MFP executive officer~~; and~~ or non-MAP executive officer; or

~~(d)~~(c) If a political action committee, the identity as a ~~each~~ political action committee controlled by the ~~broker, dealer or municipal securities dealer~~regulated entity or ~~by~~any municipal finance professional or municipal advisor professional of the regulated entity;

(B) for contributions to bond ballot campaigns (other than a contribution made by a municipal finance professional, municipal advisor professional, ~~or a~~ non-MFP executive officer or non-MAP 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) made by the persons and entities described in ~~subclause (2) of this clause (B)~~paragraph (e)(i)(B)(2) below:

(1) listing by state, the official name of each bond ballot campaign receiving contributions during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued~~, listed by state~~;

(2) the contribution amount ~~made~~ (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign), the specific date on which the contribution was made, and the contributor category for~~of each of the following persons and entities making~~ such contributions during such calendar quarter as specified below:

(a) If a regulated entity, the identity of the contributor as a ~~the broker, dealer or municipal securities dealer~~dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a ~~each~~ municipal finance professional~~; (c) each~~, municipal advisor professional, non-MFP executive officer~~; and~~ or non-MAP executive officer; or

~~(d)~~(c) If a political action committee, the identity as a ~~each~~ political action committee controlled by the ~~broker, dealer or municipal securities dealer or by~~regulated entity or any municipal finance professional or municipal advisor professional of the regulated entity;

(3) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to ~~this clause~~ paragraph (e)(i)(B) has been made, or to which a contribution has been made by a municipal finance professional, municipal advisor professional, ~~or a~~ non-MFP executive officer or non-MAP executive officer during the period beginning two years prior to such ~~individual becoming a municipal finance professional or a non-MFP executive officer~~person acquiring such status that would have been required to be disclosed if such ~~individual~~person had acquired such status ~~been a municipal finance professional or a non-MFP executive officer~~ at the time of such contribution and the reportable date of selection on which the ~~broker, dealer or municipal securities~~

~~dealer~~regulated entity was selected to engage in ~~such~~the municipal securities business or municipal advisory business, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) the payments or reimbursements, related to any contribution to any bond ballot ~~contribution,~~campaign received by ~~each broker, dealer or municipal securities dealer~~the regulated entity or any of its municipal finance professionals or municipal advisor professionals from any third party that are required to be disclosed pursuant to ~~this clause~~ paragraph (e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement.

(C) ~~a list of issuers~~listing by state, the municipal entities with which the ~~broker, dealer or municipal securities dealer~~regulated entity has engaged in municipal securities business or municipal advisory business during such calendar quarter, ~~listed by state,~~ along with the type of municipal securities business or municipal advisory business, and in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the listing of the type of municipal advisory business shall be accompanied by the name of the third party on behalf of which such business was solicited and the nature of the business solicited;

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

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

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

The Board shall make public a copy of each Form G-37 received from any ~~broker, dealer or municipal securities dealer~~regulated entity.

(ii) No ~~broker, dealer or municipal securities dealer~~regulated entity shall be required to send Form G-37 to the Board for any calendar quarter in which either:

(A) such ~~broker, dealer or municipal securities dealer~~regulated entity has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or

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

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

(2) has ~~sent~~ submitted to the Board, in the manner specified in the current *Instructions for Forms G-37 and G-37x,* completed Form G-37x, setting forth, in the prescribed format, (a) a certification to the effect that such ~~broker, dealer or municipal securities dealer~~regulated entity did not engage in municipal securities business or municipal advisory business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such ~~broker, dealer or municipal securities dealer~~regulated entity in connection with Forms G-37 and G-37x under this paragraph (e)(ii) and ~~rule~~Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, and (c) such other identifying information required by Form G-37x; provided, however, that~~,~~ if a ~~broker, dealer or municipal securities dealer~~regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the submission of Form G-37x to the Board, such ~~broker, dealer or municipal securities dealer~~regulated entity shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any ~~broker, dealer or municipal securities dealer~~regulated entity.

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

(iv) A ~~broker, dealer or municipal securities dealer~~regulated entity that submits Form G-37 or Form G-37x to the Board shall either:

(A) send two copies of such form to the Board ~~by certified or registered mail, or some other equally prompt means that provides a record of sending~~in the manner specified in the current *Instructions for Forms G-37 and G-37x*; or

(B) submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37 and G-37x*.

(f) *Voluntary Disclosure to Board*. The Board will accept additional information related to contributions made to officials of ~~issuers~~municipal entities and bond ballot campaigns and payments made to political parties of states and political subdivisions voluntarily submitted by ~~brokers, dealers or~~

~~municipal securities dealers~~regulated entities or others, provided that such information is submitted in accordance with section (e) of this rule.

(g) *Definitions*. The following terms are defined solely for purposes of this rule.

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

~~(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.~~

~~(iv)~~(ii) ~~The term "municipal~~"Municipal finance professional" means:

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

(B) any "municipal finance principal" – any associated person ~~(including but not limited to any affiliated person of the broker, dealer or municipal securities dealer, as defined in rule G-38) who solicits municipal securities business~~ who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any municipal finance representative in paragraph (g)(ii)(A) or municipal solicitor in paragraph (g)(xiii)(A);

(C) any "dealer solicitor" – 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)~~ a municipal solicitor as defined in paragraph (g)(xiii)(A);

(D) any "dealer supervisory chain person" – any associated person who is a supervisor of any ~~person described in subparagraph (C)~~ municipal finance principal up through and including, in the case of a ~~broker, dealer or municipal securities dealer~~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~~by ~~rule~~Rule G-1(a); or

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

Each person designated by the ~~broker, dealer or municipal securities dealer~~dealer as a municipal finance professional pursuant to ~~rule~~Rule G-8(a)(xvi) is deemed to be a municipal finance professional~~.~~ and ~~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.

(iii) "Municipal advisor professional" means:

(A) any "municipal advisor representative" – any associated person engaged in municipal advisory activities on the firm's behalf, other than a person whose functions are solely clerical or ministerial;

(B) any "municipal advisor principal" – any associated person who is both (i) a municipal advisor principal as defined in Rule G-3(f)(i) and (ii) a supervisor of any municipal advisor representative in paragraph (g)(iii)(A) or a municipal solicitor in paragraph (g)(xiii)(B) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C));

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

(D) any "municipal advisor supervisory chain person" – any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, as required by Exchange Act Rule 15Ba1-1(d)(4)(i)(A); or

(E) any "municipal advisor executive officer" – any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Exchange Act Rule 15Ba-1-1(d)(4)(i)); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

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

(iv) "Bank municipal advisor" means a municipal advisor that is a bank or a separately identifiable department or division of the bank as defined in Exchange Act Rule 15Ba1-1(d)(4)(i).

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

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

(A) to an official of ~~an issuer~~a municipal entity:

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

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

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

(B) to a bond ballot campaign:

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

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

(3) for payment of the costs of conducting any such ballot initiative.

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

(viii) "Municipal advisory activities" means those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, Exchange Act Rule 15Ba1-1(d)(1)-(4) and other rules and regulations thereunder.

(ix) "Municipal advisory business" means (A) the provision of advice to or on behalf of a municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities and (B) the solicitation of a municipal entity, within the meaning of Section 15B(e)(9) of the Act.

(x) "Municipal advisor third-party solicitor" means a municipal advisor that solicits a municipal entity, for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

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

~~(ii) The term "issuer" means the governmental issuer specified in section 3(a)(29) of the Act.~~

~~(vii)~~(xii) ~~The term "municipal~~"Municipal securities business" means:

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

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

(C) the provision of financial advisory or consultant services to or on behalf of ~~an issuer~~a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis, excluding all municipal advisory activities as defined in subsection (g)(viii); ~~or~~and

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

(xiii) "Municipal solicitor" means:

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

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

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

(xiv) "Non-MAP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank, as defined in Exchange Act Rule 15Ba-1-1(d)(4)(i)), but does not include any municipal advisor professional, as defined in paragraph (g)(iii); provided, however, that if no associated person of the municipal advisor meets the definition of municipal advisor professional, the municipal advisor shall be

deemed to have no non-MAP executive officers. Each person listed by the municipal advisor as a non-MAP executive officer pursuant to Rule G-8(h)(iii) is deemed to be a non-MAP executive officer.

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

~~(vi)~~(xvi) ~~The term "official of such issuer" or "official of an issuer"~~"Official of such municipal entity" or "official of a municipal entity" means any person who meets the definition of either paragraph (A) or (B) below or both.

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

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

~~(viii)~~(xvii) ~~The term "payment~~"Payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

~~(xi)~~(xviii) ~~The term "reportable~~"Reportable date of selection" means the date of the earliest to occur of: ~~(i)~~(A) the execution of an engagement letter; ~~(ii)~~(B) ~~the execution of a bond purchase agreement; or (iii)~~ the receipt of formal notification (provided either in writing or orally) from or on behalf of the

~~issuer~~municipal entity that the dealer or municipal advisor has been selected to engage in municipal securities business or municipal advisory business; or, (C) solely in the case of a dealer, the execution of a bond purchase agreement.

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

~~(ix) Except as used in section (c), the term "solicit" means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i).~~

(h) *Operative Date/Transitional Effect*. The ~~prohibition~~prohibitions on engaging in municipal securities business and municipal advisory business, as described in section (b) of this rule, ~~arises~~arise only from contributions made on or after ~~April 25, 1994.~~[insert date two weeks after SEC approval]; provided, however, that any prohibition under this rule already in effect on [date one calendar day prior to effective date of the amendments], shall be of the scope and continue for the length of time provided under Rule G-37 as in effect at the time of the contribution that resulted in such prohibition.

(i) *Application for Exemption*. A registered securities association with respect to a ~~broker, dealer or municipal securities dealer who~~regulated entity that is a member of such association, or the appropriate regulatory agency ~~as defined in Section 3(a)(34) of the Act~~ with respect to any other ~~broker, dealer or municipal securities dealer~~regulated entity, upon application, may exempt, conditionally or unconditionally, a ~~broker, dealer or municipal securities dealer~~regulated entity that ~~who~~ is prohibited from engaging in municipal securities business with ~~an issuer~~ or municipal advisory business with a municipal entity pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors:

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

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

made the relevant contribution and all employees of the ~~broker, dealer or municipal securities dealer~~regulated entity;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or a municipal advisor professional or otherwise an employee of the ~~broker, dealer or municipal securities dealer~~regulated entity, or was seeking such employment;

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

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

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

(j) *Automatic Exemptions*.

(i) A ~~broker, dealer or municipal securities dealer~~regulated entity that is prohibited from engaging in municipal securities business or municipal advisory business with ~~an issuer~~a municipal entity pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional or a municipal advisor professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: ~~(1)~~(A) the ~~broker, dealer or municipal securities dealer~~regulated entity must have discovered the contribution which resulted in the prohibition ~~on business~~ within four months of the date of such contribution; ~~(2)~~(B) such contribution must not have exceeded $250; and ~~(3)~~(C) the ~~contributor~~municipal finance professional or the municipal advisor professional who made the contribution must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the ~~broker, dealer or municipal securities dealer~~regulated entity.

(ii) A ~~broker, dealer or municipal securities dealer~~regulated entity is entitled to no more than two automatic exemptions per 12-month period.

(iii) A ~~broker, dealer or municipal securities dealer~~regulated entity may not execute more than one automatic exemption relating to contributions by the same ~~municipal finance professional~~person regardless of the time period.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, ~~and~~ Municipal Securities Dealers and Municipal Advisors

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xv) No change.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37.* Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal finance professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MFP executive officers;

(C) the states in which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business;

(D) a listing of ~~issuers~~municipal entities with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along with the type of municipal securities business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of ~~an issuer~~a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of ~~an issuer~~a municipal entity made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic

exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of ~~an issuer~~a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of ~~an issuer~~a municipal entity, per election. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal finance representative and each dealer solicitor as defined in ~~those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of~~ Rule G-37(g)(ii)~~(iv)~~ and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in ~~those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of~~ Rule G-37(g)(ii)~~(iv)~~ and for any political action committee controlled by such individuals and for any non-MFP executive officers; and

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, any political action committee controlled by a municipal finance professional, and non-MFP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments 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 payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal finance representative and each dealer solicitor as defined in ~~those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of~~ ~~rule~~Rule G-37(g)(ii)~~(iv)~~ and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in ~~those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of~~ ~~rule~~Rule G-37(g)(ii)~~(iv)~~ and for any political action committee controlled by such individuals and for any non-MFP executive officers.

(H) the contributions, direct or indirect, to bond ballot campaigns made by the broker, dealer or municipal securities dealer and each political action committee controlled

by the broker, dealer or municipal securities dealer for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the broker, dealer or municipal securities dealer or political action committee controlled by the broker, dealer or municipal securities dealer has made a contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in ~~such~~the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the broker, dealer or municipal securities dealer from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment.

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal finance professional, political action committee controlled by the municipal finance professional or non-MFP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal finance professional or a non-MFP executive officer during the period beginning two years prior to such individual becoming a municipal finance professional or a non-MFP executive officer that would have been required to be disclosed if such individual had been a municipal finance professional or a non-MFP executive officer at the time of such contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in ~~such~~the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal finance professional or non-MFP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution 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 made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) No change.

(K) Terms used in this paragraph (xvi) have the same meaning as in ~~rule~~ Rule G-37.

(L) No change.

(M) No broker, dealer or municipal securities dealer shall be subject to the requirements of this paragraph (a)(xvi) during any period that such broker, dealer or municipal securities dealer has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of ~~rule~~Rule G-37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker, dealer or municipal securities dealer that has been exempted by this clause (M)~~(K)~~ from the requirements of this paragraph (a)(xvi) engages in any municipal securities business, all requirements of this paragraph (a)(xvi) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such broker, dealer or municipal securities dealer.

(xvii) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records: [37]

(i) Reserved.

(ii) Reserved.

(iii) *Records Concerning Political Contributions and Prohibitions on Municipal Advisory Business Pursuant to Rule G-37.* Records reflecting:

[37] Draft Rule G-8(h) includes reserved subparagraphs (i) and (v) for books and records provisions that the MSRB has proposed in connection with proposed Rule G-44, reserved subparagraph (ii) for books and records provisions that the MSRB has proposed in connection with draft amendments to Rule G-20, and reserved subparagraph (iv) for books and records provisions that the MSRB has proposed in connection with draft Rule G-42.

(A) a listing of the names, titles, city/county and state of residence of all municipal advisor professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MAP executive officers;

(C) the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business;

(D) a listing of municipal entities with which the municipal advisor has engaged in municipal advisory business, along with the type of municipal advisory business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the municipal advisor and each political action committee controlled by the municipal advisor for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of a municipal entity made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the municipal advisor discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to officials of a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of a municipal entity, per election. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as

defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers; and

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal advisor professionals, any political action committee controlled by a municipal advisor professional, and non-MAP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal advisor professional or non-MAP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers.

(H) the contributions, direct or indirect, to bond ballot campaigns made by the municipal advisor and each political action committee controlled by the municipal advisor for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor or political action committee controlled by the municipal advisor has made a contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment.

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal advisor professional, any political action committee controlled by a municipal

advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor professional, political action committee controlled by the municipal advisor professional or non-MAP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal advisor professional or a non-MAP executive officer during the period beginning two years prior to such individual becoming a municipal advisor professional or a non-MAP executive officer that would have been required to be disclosed if such individual had been a municipal advisor professional or a non-MAP executive officer at the time of such contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor professional or non-MAP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) Municipal advisors shall maintain copies of the Forms G-37 and G-37x sent to the Board along with the certified or registered mail receipt or other record of sending such forms to the Board.

(K) Terms used in this paragraph (iii) have the same meaning as in Rule G-37.

(L) No record is required by this paragraph (h)(iii) of:

(i) any municipal advisory business done or contribution to officials of municipal entities or political parties of states or political subdivisions; or

(ii) any payment to political parties of states or political subdivisions

if such municipal advisory business, contribution, or payment was made prior to [the effective date of the amendments to Rule G-37].

(M) No municipal advisor shall be subject to the requirements of this paragraph (h)(iii) during any period that such municipal advisor has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of Rule G-37; provided, however, that such municipal advisor shall remain obligated to comply with clause (H) of this paragraph (h)(iii) during such period of exemption. At such time as a municipal advisor that has been exempted by this clause (M) from the requirements of this paragraph (h)(iii) engages in any municipal advisory business, all requirements of this paragraph (h)(iii) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such municipal advisor.

(iv) Reserved.

(v) Reserved.

* * * * *

Rule G-9: Preservation of Records[38]

(a) - (g) No change.

(h) *Municipal Advisor Records*.

(i) Subject to paragraphs (ii) and (iii) of this section, every~~Every~~ municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) ~~, provided that the~~The records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(iii) The records described in Rule G-8(h)(iii) shall be preserved for at least six years; provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

(i) - (k) No change.

* * * * *

[38] Marked to show changes from Rule G-9 as proposed for SEC approval in Exchange Act Release No. 72706 (Jul. 29, 2014), 79 FR 45546 (Aug. 4, 2014) (Notice of filing of SR-MSRB-2014-06 regarding supervision and compliance obligations of municipal advisors).

FORM G-37 **MSRB**

Name of ~~dealer~~Regulated Entity: _____

Report ~~period~~Period:

_____

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

State	Complete name, title (including any city/county/state or other political subdivision) of ~~issuer~~municipal entity official	Contributions by each contributor category (*i.e.*, for purposes of this form, dealer, dealer controlled PAC, municipal finance professional, municipal finance professional controlled PAC, ~~municipal finance professional~~s ~~and~~ non-MFP executive officer~~s~~, 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 (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 ~~(*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professional~~s ~~and~~ ~~non-MFP executive officer~~s~~). For each payment, list payment amount and contributor category (For example, $500 payment by non-MFP executive officer)~~

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 ~~(*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each contribution, list contribution amount and contributor category (For example, $500 contribution by non-MFP executive officer)~~

B. Reimbursement for Contributions

List below any payments or reimbursements, related to any disclosed bond ballot contribution, received by each ~~broker, dealer or municipal securities dealer~~dealer, municipal finance professional, ~~or~~ 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. ISSUERS with which ~~dealer~~the regulated entity has engaged in municipal securities business or municipal advisory business (list by state)

A. Municipal Securities Business

State	Complete name of issuer and city/county	Type of municipal securities business (negotiated underwriting, ~~agency offering~~private placement, financial advisor, or remarketing agent)

B. Municipal Advisory Business

State	Complete name of issuer 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)

~~B.~~C. Ballot-Approved Offerings

Full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which each contributor category ~~(*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers)~~ has made a contribution and the reportable date of selection on which the ~~broker, dealer or municipal securities dealer~~regulated entity was selected to engage in ~~such~~ the municipal securities business or municipal advisory business.

Full ~~Issuer~~ Name of Municipal Entity	Full Issue Description	Reportable Date of Selection

Signature: _____ **Date:** _____

(must be officer of ~~dealer~~regulated entity)

Name: _____

Address: _____

Phone: _____

Submit to the Municipal Securities Rulemaking Board two completed forms quarterly by due date (specified by the MSRB)~~ to:~~

~~**Municipal Securities Rulemaking Board**~~
~~1900 Duke Street~~
~~Suite 600~~
~~Alexandria, Virginia 22314~~

* * * * *

FORM G-37x **MSRB**

Name of ~~dealer~~Regulated Entity: _____

The undersigned, on behalf of the ~~dealer~~regulated entity identified above, does hereby certify that such ~~dealer~~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 ~~dealer~~regulated entity, does hereby acknowledge that, notwithstanding the submission of this Form G-37x to the MSRB, such ~~dealer~~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)~~(K)~~ 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 ~~dealer~~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 ~~said~~the exemption.

Signature: _____ **Date:** _____

(must be officer of ~~dealer~~regulated entity)

Name: _____ **Phone:** _____

Address: _____

Submit to the Municipal Securities Rulemaking Board

~~Submit to: **Municipal Securities Rulemaking Board**~~
~~1900 Duke Street~~
~~Suite 600~~
~~Alexandria, Virginia 22314~~

Alphabetical List of Comment Letters on MSRB Notice 2014-15 (August 18, 2014)

1. American Council of Engineering Companies: Letter from David A. Raymond, President and CEO, dated October 1, 2014

2. Anonymous: E-mail dated October 1, 2014

3. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated October 1, 2014

4. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated October 8, 2014

5. Caplin & Drysdale: Letter from Trevor Potter and Matthew T. Sanderson dated September 30, 2014

6. Castle Advisory Company LLC: E-mail from Stephen Schulz dated August 18, 2014

7. Center for Competitive Politics: Letter from Allen Dickerson, Legal Director, dated October 1, 2014

8. Dave A. Sanchez: Letter dated November 5, 2014

9. Hardy Callcott: E-mail dated September 9, 2014

10. National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated October 1, 2014

11. Public Citizen, et. al.: Letter dated October 1, 2014 from Bartlett Naylor, Financial Policy Advocate, and Craig Holman, Government Affairs Lobbyist, Public Citizen; Ron Fein, Legal Director, Free Speech for People; John Harrington, President, Harrington Investments, Inc.; New Progressive Alliance; American Federation of State, County and Municipal Employees; ReFund America Project at the Roosevelt Institute; U.S. PIRG; Consumer Federation of America; and Americans for Financial Reform

12. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 30, 2014

13. WM Financial Strategies: Letter from Joy A. Howard, Principal, dated October 1, 2014

ACEC
American Council of Engineering Companies
100 Years of Excellence

David A. Raymond
President & CEO

October 1, 2014

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: Draft Amendments to MSRB Rule G-37

Dear Mr. Smith:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America's engineering industry – I appreciate the opportunity to comment on the draft amendments to MSRB Rule G-37, which would regulate political contributions made by firms and individuals who are registered as municipal advisors under the Dodd-Frank financial services reform law.

ACEC members – numbering more than 5,000 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation's economy, and enhance and safeguard America's quality of life. Many of our member firms work with municipal clients and could potentially be affected by the municipal advisor rule.

ACEC strongly supports protections to ensure a fair and transparent municipal procurement process. At the same time, we have serious concerns about this regulatory effort, which would effectively deny American firms and the American citizens they employ the right to engage in the democratic process.

The draft amendments to MSRB Rule G-37 propose to place conditions on the political activity of municipal advisors that are similar to those in place for securities dealers. Under the draft amendments, registered municipal advisors that make political contributions to municipal officials who select such advisors would be prohibited from providing municipal advisory services to those municipalities for a two-year cooling-off period. There is a limited exception for *de minimis* contributions. The ban on municipal advisory business could be triggered by contributions to these municipal officials from the registered firm, municipal advisor professionals (MAPs) within the firm, or a political action committee (PAC) controlled by either the firm or an MAP. Under the rule, the term MAP applies to individuals who perform municipal advisory services, their

T 202-347-7474 F 202-898-0068 DRAYMOND@ACEC.ORG
1015 15th Street, NW, 8th Floor Washington, DC 20005-2605 www.acec.org

supervisors, up through and including the chief executive officer, and members of the executive or management committee. The cooling-off period also could be triggered by the look-back provision in the draft rule, which applies to contributions made within two years prior to an individual's employment as an MAP, or to contributions made within six months prior to an individual's employment as a supervisor of MAPs or executive officer in the firm. Finally, indirect contributions, such as those made through a PAC not controlled by the MAP, and contributions that are solicited by the MAP could also trigger the cooling-off period.

We are particularly concerned that the MSRB is proposing to limit political engagement while the SEC is still in the process of clarifying the definition of municipal advisory services. The Dodd-Frank law specifically exempted "engineers providing engineering advice" from the municipal advisor rule, yet it is apparent that some services routinely requested by municipal clients could be covered. The engineering industry is working in good faith with the SEC to further refine the municipal advisor definition. Unfortunately, the draft amendments to MSRB Rule G-37 seek to place new sanctions within a regulatory framework that is still changing. We would respectfully urge the MSRB to reconsider this effort until the SEC has fully clarified the definition of municipal advisory services.

Beyond ACEC's fundamental concerns with the premise of the rule, it creates a potential conflict with other federal laws relative to its "look-back" provision. In general, the Department of Labor does not favorably view questions during the hiring process that are not directly related to the job itself. Employers would be reluctant to ask about political contributions due to the risk that the hiring process would be viewed as discriminatory, yet failing to do so could trigger the cooling-off period and make the firm ineligible to provide municipal advisory services. We would ask at a minimum that the MSRB address this apparent contradiction with existing employment law and inform registered firms how they can legally obtain information about political contributions without triggering sanctions elsewhere.

ACEC also believes that the draft amendments to Rule G-37 are not sufficiently clear regarding whether contributions to the PAC of a trade association, such as ACEC and its state member organizations, would constitute indirect contributions that could trigger the two-year ban. ACEC members choose to participate in ACEC/PAC and the PACs of our state member organizations in order to support the election of officials who understand the engineering industry. We are familiar with the discussion of indirect contributions in the interpretive notice on MSRB Rule G-37 that is located on the MSRB's website. However, we believe that additional guidance is needed as to what constitutes an indirect contribution to a trade association PAC so that our member firms and their employees can comply appropriately with the rule.

In addition, the rule would require extensive education of employees regarding the ramifications of personal political contributions on the firm's ability to provide municipal advisory services. It would be extremely challenging for large engineering firms that employ thousands of people to be aware of all individual donations. Small firms, in which engineers and other employees often take on multiple roles, may find compliance

difficult due to a lack of personnel resources. We believe the MSRB should consider these administrative costs as it continues to work on the draft amendments to Rule G-37.

As mentioned above, the draft amendments to Rule G-37 include a *de minimis* exclusion from the two-year ban. This provision states that the two-year ban will not be triggered by contributions made by an MAP to a candidate for municipal office for whom the MAP can vote, as long as the contributions do not exceed $250 per election. We note that the Rule G-37 FAQ document located on the MSRB's website has two different definitions of "election." Section II.6 states that "The *de minimis* exception is keyed to an election cycle…" However, Section II.8 states that the *de minimis* exception of $250 applies separately to primary and general elections. We request that the MSRB clarify whether "election" in this context refers to an election cycle, or whether there are separate $250 thresholds for primary and general elections.

We respectfully request that the MSRB consider the issues and questions we have raised. Thank you for your consideration of our comments, and we look forward to working with the MSRB on these issues as the rulemaking process moves forward.

Sincerely,

David A. Raymond
President & CEO

Comment on Notice 2014-15

from Anonymous Attorney, RIA-MA

on Wednesday, October 01, 2014

Comment:

I am an attorney who represents a Registered Investment Adviser (RIA) that is also a Municipal Advisor (MA; together "RIA-MA"). As an RIA, as noted on pages 9 and 23 of Notice 2014-15, RIA-MA is already subject to stringent political contribution compliance and recordkeeping requirements under 17 C.F.R. §§ 206(4)–2 and 206(4)–5.

However, we are concerned that although the proposal purports to not apply to RIAs (see Page 9, n. 18: "Rule G-37 does not apply to investment advisers") it appears that the proposed rule would impose substantial additional administrative burdens on RIAs that are also MAs. Indeed, during a recent webinar, MSRB staff indicated that this provision is intended to apply to RIAs that are also MAs.

This stance is borne out in the text of the proposed rule: proposed G-37(e)(i) indicates, in stark contrast to the statement in footnote 18, that "Each ... municipal advisor must send to the Board ... Form G-37" at least quarterly. This means that RIAs who are also MAs would be required to go well beyond current political contribution recordkeeping requirements--which are already more than sufficient for the SEC's congressionally-mandated law enforcement responsibilities--to demonstrate requirements that the MSRB has elsewhere stated in writing should not apply.

The SEC can already easily obtain all the information it requires to ensure that RIAs are operating lawfully with respect to governmental entity customers: RIAs are required to maintain current political contribution records at all times. Because the SEC has enforcement authority for MSRB rules, with respect to RIAs, this rule, if implemented, would increase the SEC's workload when reviewing political contribution information: The SEC would need to review two sets of records to determine 1) substantive compliance with congressional mandates (where sufficient information already exists in current RIA records), and 2) also to review the sufficiency of the extensive additional, yet perhaps outdated, quarterly documentation that the MSRB is proposing to require to demonstrate essentially identical behavior.

Thus, for RIAs that are also MAs, the reporting requirements of this proposed rule would not only impose on RIAs an undue and unnecessary burden, but they would also divert scarce SEC enforcement resources to reviewing additional information where more focused and relevant information could be obtained at any time from already existing records.

If, as stated in the proposal, the MSRB sees a "need" for the amendments to help ensure that RIAs that are also MAs are not at a "competitive disadvantage" to MAs that are not also RIAs (see page 23), the current proposal clearly fails: It would place RIAs at a further competitive disadvantage by requiring them to maintain two sets of political contribution records, whereas MA-only MAs would only be required to maintain one set of records.

Thus, to achieve parity for RIA-MAs and exclusive MAs, we further recommend that the MSRB explicitly state in Rule G-37 that none of its provisions apply to RIAs that are also MAs except for a single new one that we propose here: Allow an RIA to submit a notification to the MSRB that the RIA is exempt from Rule G-37 because it is already subject to stringent activity restrictions and reporting requirements on political contributions.

BDA Bond Dealers of America

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October 1, 2014

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2014-15 August 18, 2014) – Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2014-15 ("Notice") seeking comment on amendments to MSRB Rule G-37 (the "Draft Rule") on political contributions made by dealers and prohibitions on municipal securities business, to extend the rule to cover municipal advisors. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets.

BDA Supports MSRB's Approach. The BDA supports the approach that the MSRB has taken in extending Rule G-37 to municipal advisors. As the BDA has stated since the adoption of the Dodd-Frank Act, we believe that it is important that there is a level playing field between dealers and municipal advisors. We believe the MSRB's approach in the Draft Rule would provide that level playing field with respect to political contributions and prohibitions on future business.

Potentially Duplicative Regulatory Regime. We note that the approach the MSRB has taken with respect to the Draft Rule may entail unnecessary duplication for dealers. For example, as is the case with some dealers, all of their employees who act as a municipal advisor also serve as bankers in an underwriting capacity. The way the MSRB has written the rule will require these employees to keep dual records and disclosures for the same contributions - contributions they are already required to monitor and disclose. We would therefore suggest to the MSRB that they consider revising the provisions of amended Rule G-37 to permit those employees to maintain one set of records and disclosures.

Thank you for the opportunity to submit these comments on the Draft Rule.

Sincerely,

Michael Nicholas

Chief Executive Officer

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October 8, 2014

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2014-15 August 18, 2014) – Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this updated and revised letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2014-15 ("Notice") seeking comment on amendments to MSRB Rule G-37 (the "Draft Rule") on political contributions made by dealers and prohibitions on municipal securities business, to extend the rule to cover municipal advisors. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets.

BDA Supports Leveling the Playing Field Between Dealers and Municipal Advisors . The BDA supports the approach that the MSRB has taken in extending the political contribution prohibitions contained within Rule G-37 to municipal advisors. As the BDA has stated since the adoption of the Dodd-Frank Act, we believe that it is important that there is a level playing field between dealers and municipal advisors. We believe the MSRB's approach in the Draft Rule would provide that level playing field with respect to political contributions and prohibitions on future business.

Potentially Duplicative Regulatory Regime. We note that the approach the MSRB has taken with respect to the Draft Rule may entail unnecessary duplication for dealers. For example, as is the case with some dealers, all of their employees who act as a municipal advisor also serve as bankers in an underwriting capacity. The way the MSRB has written the rule will require these employees to keep dual records and disclosures for the same contributions - contributions they are already required to monitor and disclose. We would therefore suggest to the MSRB that they consider revising the provisions of amended Rule G-37 to permit those employees to maintain one set of records and disclosures.

Harmonization of De Minimis Contribution. We urge the MSRB to increase the de minimis contribution limits for dealers and municipal advisors with respect to officials

for whom they are entitle to vote from $250 to $350. This would allow that de minimis contribution to be harmonized with the comparable de minimis contribution limits for investment advisers and swap dealers, resulting in more efficient administration of political contribution programs for dealers and municipal advisors that are also subject to the CFTC swap dealer and/or SEC investment advisor political contributions rules. We do not support extending the de minimis contribution limit to cover contributions to officials for whom a dealer or municipal adviser is not entitled to vote as that would create considerable chaos in the municipal securities market with respect to rules that have become settled and accepted and appear to be working well.

Thank you for the opportunity to submit these revised comments on the Draft Rule.

Sincerely,

Michael Nicholas

Chief Executive Officer

Caplin & Drysdale
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September 30, 2014

VIA CERTIFIED MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Regulatory Notice 2014-15 (Request for Comment on Draft Amendments to Rules G-37 to Extend Its Provisions to Municipal Advisors)

Dear Mr. Smith:

We write today to comment on the Board's proposed amendments to Rule G-37. As members of Caplin & Drysdale's Political Law Group, we frequently advise major corporations and political organizations on compliance with Rule G-37, Securities & Exchange Commission Rule 206(4)-5, state-level "pay-to-play" regulations, and campaign finance laws generally.[1] We are therefore pleased to offer two narrow suggestions that we believe, based on first-hand experience, would improve the efficacy and administration of amended Rule G-37.

First, we urge the Board to set the thresholds for the *de minimis* contribution exemption,[2] the returned contribution exemption,[3] and required contribution disclosure[4] at $350 rather than $250. This modest increase would partly account for the effects of inflation since the Board first established $250 as an important measure in 1994.[5] Perhaps more importantly, though, raising these thresholds to $350 would better harmonize Rule G-37 with SEC Rule 206(4)-5. We recognize that harmonizing the two rules is likely not an overall priority of the Board, but doing so in this limited manner would facilitate compliance by simplifying the number of relevant threshold amounts for individuals and entities covered by both rules.

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[1] Caplin & Drysdale represents clients with an interest in the outcome of this amendment to Rule G-37, but this comment letter is filed on our own behalf and not on behalf of any client or clients.

[2] Proposed Rule G-37(b)(iii)(A).

[3] Proposed Rule G-37(j).

[4] Proposed Rule G-37(e)(i).

[5] Were the $250 amount fully indexed for inflation in 1994 by the Board, the threshold would now be at $401.23. Federal campaign finance laws, along with state laws that limit the amount that an individual can contribute to candidates, index these contribution limits for inflation. *See, e.g.,* 11 C.F.R. § 110.1(b)(1)(i)-(ii). When the Bipartisan Campaign Reform Act of 2002 was first adopted, for example, the contribution limit for individuals was $2,000 per election per candidate. That contribution limit is now $2,600.

Second, we suggest that the Board institute a new *de minimis* contribution exemption of $150 per election for contributors who are not eligible to vote for an official. Rule G-37 has historically lacked such an exemption. But the Securities & Exchange Commission, in promulgating Rule 206(4)-5, acknowledged that "persons can have a legitimate interest in contributing to campaigns of people for whom they are unable to vote," particularly "in large metropolitan areas where a covered [individual] may work and live in different jurisdictions."[6] Because amended Rule G-37 will cover additional individuals and entities, the Board should attempt to avoid any undue impositions on legitimate and constitutionally protect interests. The Board, in our opinion, can better tailor the amended Rule's scope by instituting a new *de minimis* contribution exemption of $150 per election for contributors who are not eligible to vote for an official.

We welcome the opportunity to discuss these two suggestions with the Board and its staff. If we can be of further assistance, please contact us at (202) 862-5000.

Respectfully submitted,

Trevor Potter
Caplin & Drysdale, Chtd.

Matthew T. Sanderson
Caplin & Drysdale, Chtd.

[6] 75 Fed. Reg. 41018, 41035 (July 14, 2010).

Comment on Notice 2014-15

from Stephen Schulz, Castle Advisory Company LLC

on Monday, August 18, 2014

Comment:

Restrict pay to play but dont require advisors who dont make political contributions to do anything. Only require those who give to submit something. Thanks.

CENTER *for* COMPETITIVE POLITICS
Congress shall make no law...

October 1, 2014

Via Electronic Submission

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors

Dear Mr. Smith,

I write on behalf of the Center for Competitive Politics ("CCP"), a § 501(c)(3) organization founded to educate the public concerning the benefits of increased freedom and competition in the electoral process. Toward that end, CCP engages in research, scholarship, and outreach to protect and promote the First Amendment rights of speech, assembly, and petition. CCP also operates a *pro bono* law center that brings legal challenges to state and federal laws and regulations that unconstitutionally burden the exercise of these freedoms.

MSRB Rule G-37 is of particular importance to CCP because it limits the ability of covered individuals to make contributions to candidates for public office. The right to support candidates in this way, regardless of occupation, is a central liberty secured by the First Amendment.

We have no doubt that Rule G-37 and the Draft Amendments are a well-intentioned effort to prevent pay-to-play practices at the state and local levels. However, both the current Rule and the Draft Amendments are vague on important particulars, or cover a wider range of activity than is necessary for the prevention of actual or perceived pay-to-play corruption. Pay-to-play practices could be prevented by alternative approaches that would lessen or eliminate any impact on First Amendment rights. Additionally, we believe the Board should more carefully consider recent Supreme Court decisions that impact the justification for campaign contribution limits and revise Rule G-37 and the Draft Amendments accordingly.

The vagueness and overbreadth of Rule G-37 and the Draft Amendments present serious constitutional concerns, in particular because the scope of covered persons and covered candidates will often be unclear, and consequently the Rule will chill activity that the MSRB likely does not intend to cover. The MSRB appears aware of this difficulty, and CCP applauds the Board's attempts to provide greater clarity in some portions of the Draft Amendment than what currently exists in the present Rule. Nevertheless, because the Draft Amendments largely preserve the existing vagueness and overbreadth problems of Rule G-37, while expanding the regulatory scope of the Rule, CCP writes to express concerns with the present Draft.

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Below, I highlight CCP's most pressing and specific concerns. Before I address these issues, I begin by noting two areas where the Amendments do recognize constitutional issues or increase Rule G-37's clarity and precision, and urge the Board to build much more substantially on those elements if it proceeds to amend Rule G-37.

I. The Draft Amendments recognize that restrictions on First Amendment rights must be tailored to prevent *quid pro quo* corruption.

CCP commends the MSRB for recognizing that it must incorporate the United States Supreme Court's constitutional precedents into Rule G-37. In particular, the MSRB has taken the important step of recognizing that "corruption," in a legal sense, is limited to *quid pro quo* or "dollars for favors" transactions. Since its landmark campaign finance ruling in *Buckley v. Valeo*, the Supreme Court has recognized that, in order to be consistent with the First Amendment, restrictions on political contributions must be tailored to target actual or apparent corruption, meaning *quid pro quo* arrangements.[1] The Court's recent rulings in *Citizens United v. FEC*[2] and *McCutcheon v. FEC*[3] provide a strong signal that such restrictions will be carefully scrutinized.

The Regulatory Notice incorporates this understanding by reiterating from the outset that "'pay to play' practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a *quid pro quo* for the receipt of government contracts."[4] Constitutionally permissible regulations, as the Regulatory Notice recognizes, must be appropriately tailored to further this end, without unnecessarily stifling the exercise of First Amendment rights.[5] It is laudable that the Board has preserved this understanding of corruption in the Draft Amendments to Rule G-37, as misunderstanding the permissible scope of "corruption" is a common error. The Board's recognition[6] of *Buckley*'s requirements should guide any amendments it ultimately adopts.

Unfortunately, while the Board recognizes that the regulation should be tailored so as to address *quid pro quo* transactions, the Draft Amendments fall short of the tailoring needed under the First Amendment.

II. The Draft Amendments add several new definitions that increase precision and clarity in Rule G-37.

The Draft Amendments bring some welcome, albeit limited, clarity to Rule G-37 by defining previously ambiguous terms. Substituting the term "municipal entity"—as defined in the

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[1] 424 U.S. 1 (1976).
[2] 558 U.S. 310 (2010).
[3] 134 S. Ct. 1434 (2014).
[4] MUNICIPAL SECURITIES RULEMAKING BOARD, REGULATORY NOTICE 2014-15, REQUEST FOR COMMENT ON DRAFT AMENDMENTS TO MSRB RULE G-37 TO EXTEND ITS PROVISIONS TO MUNICIPAL ADVISORS (2014) ("Regulatory Notice") at 3
[5] *See, e.g., Id.*
[6] *See, e.g., Id.*

Exchange Act[7]—for the term "issuer" throughout the Rule is one such instance. This is commendable as it makes it easier for the regulated community to know who, exactly, is subject to the Rule without having to negotiate various definitions and standards.

Similarly, Draft Rule G-37(b)(ii)(B) contains a safe harbor for contributions made before the contributor becomes a dealer solicitor or municipal advisor. This would appropriately require that there be a real opportunity for actual or apparent *quid pro quo* corruption before First Amendment activity is stifled. The same is true for the similar exclusion under Draft Rule G-37(b)(ii)(C), applicable to contributions made more than six months before becoming a municipal finance professional or municipal advisor professional. Both provisions improve upon the existing Rule.

Finally, replacing "the term 'official of an issuer' with the new defined term 'official of a municipal entity' takes into account the possibility that an official may have the ability to influence the selection of a dealer but not a municipal advisor, or vice versa."[8] This tailoring is welcome, as is the MSRB's judicious notation that "these separate categories are created to ensure that there is a nexus between the contribution and the awarding of business that gives rise to a sufficient risk of corruption or the appearance of corruption to warrant a two-year ban."[9] This, indeed, is the fundamental idea behind the constitutional tailoring that the Supreme Court has required.

III. The Draft Amendments preserve, and in some cases exacerbate, existing vagueness and overbreadth.

Regrettably, the Draft Amendments, while providing some additional clarity in certain areas, are confusing in many others. One example is the proposed definition of the term "official of a municipal entity." This phrase denotes two types of officials, based upon the type of selection influence they exercise: an "official with dealer selection influence"[10] and an "official with

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[7] *See* Exchange Act Rule 15Ba1-1(g),17 C.F.R. 240.15Ba1-1(g) (2014). which defines municipal entity to mean "any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (1) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) Any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (3) Any other issuer of municipal securities." The term includes both issuers of municipal securities as well as certain non-issuer entities. Examples of non-issuer municipal entities include public pension funds, local government investment pools ("LGIPs"), other state and local governmental entities or funds, and participant-directed investment programs or plans, such as 529 and 403(b) plans.

[8] Regulatory Notice at 11.

[9] *Id.* at 11-12.

[10] Draft Rule G-37(g)(xvi)(A) ("'Official with dealer selection influence' means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a dealer for municipal securities business or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence

municipal advisor selection influence."[11] The decision to replace the term "official of an issuer" with the term 'official of a municipal entity' is, as noted previously, itself a positive development. These definitions, however, worsen existing overbreadth and vagueness problems in several important ways.

First, the definitions encompass all incumbents or candidates for an office which is "directly *or indirectly responsible for, or can influence* the outcome of" the decision to hire a dealer for municipal securities business or an advisor for municipal advisory business.[12] It also includes incumbents and candidates "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" such hiring.[13]

The breadth of this definition is staggering. The inherent vagueness of "indirect influence" and "indirect responsibility" is self-evident. Moreover, there are no articulated standards sufficient to guide the regulated community in determining who is and is not a qualified officeholder (and consequently, which contributions do and do not trigger the ban on business). This in and of itself stifles activity protected by the First Amendment. What is more, the definitions extend to *candidates* for office, prohibiting contributions simply because someone is running for an office that may not, in fact, have any connection to any municipal dealer or advisor selection. Even a contribution to a losing candidate would appear to trigger sanctions under the Draft Amendments.

This lack of clarity will inevitably mean that some contributions that would otherwise be made, and which pose little to no danger of pay-to-play corruption, will not be made. That is itself a substantial First Amendment harm.

The definition of "solicit" under Draft Rule G-37(g)(xix) suffers from similar problems, arising from an effort to achieve comprehensive regulation through overbroad language. This definition includes "a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement" for dealer or adviser regulated under the Rule.[14] The spirit of this rule is easily understood—to avoid a *quid pro quo* of dollars for municipal business. But the phrase "indirect communications" is undefined, and worse, uncabined. In fact, as the hallmark of a communication is the conveyance of information from one person to another, it is not clear what an "indirect communication" entails; either information is conveyed or it is not.

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the outcome of, the hiring by a municipal entity of a dealer for municipal securities business by an issuer.")

[11] Draft Rule G-37(g)(xvi)(B) ("'Official with municipal advisor selection influence' means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a municipal advisor for municipal advisory business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a municipal advisor for municipal advisory business.")

[12] Draft Rule G-37(g)(xvi)(A)-(B).

[13] *Id.*

[14] Draft Rule G-37(g)(xix).

Draft Rule G-37(c)(i) and (ii) prohibit solicitation (though under a different definition of "solicit" than applies elsewhere in the Rule) and coordination of contributions. This portion of the Draft Rule is overbroad because it applies to dealers or municipal advisors that are "engaging or seeking to engage in municipal securities business or municipal advisory business."[15] How can a regulated person determine whether such actors are "seeking" to engage in this type of business? Even if this provision were decipherable, it would surely present significant difficulties of proof. Perhaps more importantly, it will deprive regulators of a clear and consistent definition of covered persons, a circumstance that may ultimately lead to the perception or reality of selective enforcement.

Exacerbating these problems is current Rule G-37(d)'s prohibition on persons "directly or indirectly, through or by any other person or means, do[ing] any act which would result in a violation" of the two-year ban on business or prohibition on solicitation or coordination. While it is appropriate to prohibit circumvention of otherwise-constitutional rules that target *quid pro quo* corruption or its appearance, this catchall provision—and the now familiar use of the word "indirectly"—could be read broadly. In practice, it will often be interpreted to reach nearly any behavior that could conceivably be covered by the Rule's already-overbroad provisions, a particularly troubling prospect given the penalties involved. Again: how does one "indirectly" perform an act?[16] This is insufficient tailoring under the First Amendment.

In short, the Draft Amendments attempt to obtain universal coverage by employing terms that are both vague and overbroad. This is an approach to regulation the United States Supreme Court has long decried,[17] and a practice that leaves the present Draft Amendments open to eventual constitutional challenge.

IV. By creating new categories of regulated entities—collectively, the MAP categories—the Draft Amendments make the rule less clear.

The draft rule proposes to add five categories of Municipal Advisor Professionals ("MAP"), which are analogous to the existing categories of Municipal Finance Professionals. While likely a commendable attempt to clarify the scope of the Rule, these new definitions exacerbate rather than reduce constitutional problems. Under the current Rule, it can be difficult to determine what constitutes a sufficient "control" relationship for purposes of establishing vicarious liability when working as or with a Municipal Finance Professional, under one of the five categories. The

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[15] Draft Rule G-37(c)(i)-(ii).

[16] Similarly, Draft Amended Rule G-37(g)(x) includes those performing these services for "indirect compensation" within the definition of a "municipal advisor third-party solicitor." The lack of a limit to what could constitute such "indirect compensation" is further troubling. Absent guidance on this matter, roughly anything of any subjective value to an individual could be construed as "indirect compensation" by officials seeking to zealously enforce the Rule.

[17] *See, e.g, NAACP v. Button*, 371 U.S. 415, 438 (1963) ("[b]road prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms") (citing *Near v. Minnesota*, 283 U.S. 697 (1931); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *Schneider v. Irvington*, 308 U.S. 147, 162 (1939)).

Amendments preserve this imprecision. For example, a triggering contribution may be made, in the case of the Draft Amendments, by any associated person of a municipal advisor who "is a supervisor of any municipal advisor principal up through and including the Chief Executive Officer or similarly situated official"[18] or "is a member of the executive or management committee (or similarly situated official)."[19]

This stands in stark contrast to the organizational and accountability structure of PACs, which both the current and Draft Rule G-37 reference multiple times. An entire regulatory regime has developed solely for the purpose of determining who is legally responsible for a PAC's activity, including its organization,[20] registration,[21] reporting[22], and other obligations. This system exists within a decades-old and comprehensive regime that is continually fine-tuned administratively,[23] legislatively[24] and judicially[25] to ensure that it does, in fact, limit its regulatory scope to activity that is properly tailored to preventing *quid pro quo* corruption. The complexity, specificity, and careful drafting of PAC rules are consistent with the importance of the First Amendment rights that PAC status implicates. Imprecise or overbroad regulation in this context violates the Constitution. Nevertheless, the MAP categories attempt to impose arguably greater burdens, but lack such a structure. What's more, such structure would be insulated from all of the avenues of judicial and administrative review that PACs enjoy.

Finally, the Regulatory Notice asserts that "[t]he regime established by Rule G-37 is widely recognized as having significantly curbed 'pay to play' practices and the appearance of such practices in the municipal securities market."[26] CCP would caution the Board, however, in relying too heavily on this assertion. The evidence on this point is far from conclusive, as the citations in the Regulatory Notice are primarily internal. They do not provide adequate grounds to enact and retain rules that are already constitutionally problematic.

It is also worth noting that, once the MSRB finalizes any rule amendments and submits them to the SEC, the Commission must publish them in the Federal Register for public comment before

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[18] Draft Rule 37-G(g)(iii)(D).
[19] Draft Rule 37-G(g)(iii)(E).
[20] 52 U.S.C. § 30102 (2014).
[21] 52 U.S.C. § 30103.
[22] 52 U.S.C. § 30104.
[23] *See, e.g.*, Pub. L. 93-443 (codified as amended at 52 U.S.C. § 30106) (Federal Election Commission's enabling statute, noting that "The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of the Internal Revenue Code…[and] shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.")
[24] *See, e.g.,* Federal Election Campaign Act of 1971 (Pub. L. 92-225) ("FECA"); Bipartisan Campaign Reform Act of 2002 (Pub. L. 107-155).
[25] *See, e.g, Buckley v. Valeo*, 424 U.S. 1 (1976) (invalidating certain FECA provisions, including the scope of its definition of a political committee, under the First Amendment).
[26] Regulatory Notice at 4 (citing "*See* Release No. IA-3043 (Jul. 1, 2010), 75 FR 41018, at 41020, 41026-41027 (Jul. 14, 2010) ('IA Pay to Play Approval Order') (discussing the rationale for adopting the SEC's "pay to play" rule for investment advisers and modeling major components of SEC Rule 206(4)-5 on Rule G-37); *see also id.* at n. 101 and accompanying text.")

they become law.[27] If incorporated into the final rule, the constitutional and practical problems identified in this letter will continue to draw criticism for the reasons just described.

V. The contribution limits are unreasonably low and have no justification.

Virtually all highway fatalities could be eliminated if the speed limit were reduced to 20 mph. Yet few, if any, people would favor such a change. The draft amendments likewise take a radical approach to limiting contributions to certain candidates by barring them altogether. While eliminating political contributions completely in such cases will prevent "pay-to-play" arrangements, they also stifle protected First Amendment activity. Under the Draft Rule, if a covered advisor cannot vote for the covered candidate, no contribution is permitted, not even a dollar.[28]

The proposed rule's $250 contribution limit for officials for whom one can vote, and its ban on contributions for candidates for whom one cannot, is not narrowly tailored.[29] This is clear where the SEC, in 2010, found that a $150 contribution limit for investment advisers who could not vote for the candidate was sufficient to achieve its pay-to-play objectives.[30] The MSRB has provided no explanation as to why the higher SEC limits are insufficient, and CCP remains skeptical that even those limits are constitutional absent a strong evidentiary record on that point.

Moreover, the ban on contributions to candidates for whom one cannot vote is likely unconstitutional: the Supreme Court's 2014 decision in *McCutcheon v. FEC* reiterated the importance of associational rights, which are not limited to associating with candidates in one's own district.[31] The *McCutcheon* ruling would make little sense if bans on out-of-district contributions were constitutional. Similarly, the Supreme Court has never "allowed the exclusion of a class of speakers from the general public dialogue,"[32] which is exactly what the Draft Rule would do.

Even where the covered advisor may vote for the covered candidate, the contribution limit is $250. The same contribution limit would apply whether the candidate is running for office in a city with millions of residents or a town with just a few thousand citizens. A uniform $250 contribution limit covering a wide variety of municipalities evinces no effort to tailor the rule to concerns about corruption. The words of U.S. District Court Judge Beryl Howell, speaking of

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[27] *See, e.g.*, MUNICIPAL SECURITIES RULEMAKING BOARD, MARKET REGULATION—RULEMAKING PROCESS, http://www.msrb.org/About-MSRB/Programs/Market-Regulation.aspx (last accessed October 1, 2014).

[28] Draft Rule G-37(b)(ii).

[29] *Id.*

[30] 17 C.F.R. 275.206(4)-5(b) (2014).

[31] 134 S. Ct. at 1449 ("To require one person to contribute at lower levels than others … is to impose a special burden on broader participation in the democratic process. And as we have recently admonished, the Government may not penalize an individual for 'robustly exercis[ing]' his First Amendment rights.") (quoting *Davis v. FEC*, 554 U.S. 724, 739 (2008)).

[32] *Citizens United v FEC*, 558 U.S. at 341.

SEC Rule 206(4)-5, are relevant here: "the $350 seems like it came out of thin air."[33] In the absence of a reasoned and empirically sound rationale for the Board's $250 figure, it appears to have been pulled from thin air.

Despite the lack of a record justifying its new contribution limits, the MSRB appears to have substituted its judgment for the more considered deliberations of state legislatures. Most of the states have crafted contribution limits in an attempt to limit corruption or the appearance of corruption. Some states do not limit contributions to candidates. There is no evidence that states without contribution limits are more corrupt than states with such limits. The Board has failed to explain why the campaign finance regulations crafted by state governments for the specific circumstances of each state are nevertheless inadequate to address "pay-to-play" concerns.

VI. The MSRB should consider alternatives to the proposed Draft Amendments.

In the case of *McCutcheon v. FEC*, the Supreme Court ruled that aggregate limits on contributions to candidates are unconstitutional.[34] In the opinion, the Court specifically noted that Congress had failed in its duty to consider any of the available "alternatives" that would also serve the government's interest "while avoiding unnecessary abridgment of First Amendment rights."[35]

There are many possible, and effective, alternatives to the draconian contribution restrictions proposed by the Draft Amendments. There is no evidence that the Board considered these other, less restrictive alternatives.

One possible approach would provide for tougher penalties for those who use pay-to-play arrangements to obtain contracts. Stronger investigative tools to audit suspected pay-to-play activities could focus resources on the bad actors in the system. Whistleblower protections could be written to protect those who report wrongdoing and whistleblowers could also be given rewards based on the size of the ill-gotten contracts or the penalties imposed for violations.

The Board also appears not to have considered alternatives that would provide exemptions from the rule if contracts are put up for bid in a transparent way that forecloses pay-to-play manipulation. Similarly, certain contracting procedures might be imposed, or certain officials may be required to recuse themselves from decisions regarding certain contractors. A contribution limit rule, if retained, should be limited to those circumstances where it is indeed needed, and only after alternative means of preventing pay-to-play practices have been considered.

VII. The MSRB should clearly exempt contributions in support of independent expenditures from the proposed Draft Amendments and current rule.

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[33] Josh Gerstein, *Judge Mulls SEC Limits on Political Donations*, POLITICO (Sept. 12, 2014), http://www.politico.com/blogs/under-the-radar/2014/09/judge-mulls-sec-limits-on-political-donations-195402.html

[34] 134 S. Ct. at 1462.

[35] *Id.* at 1458 (citation and internal quotation marks omitted).

In adopting Rule 206(4)-5, the SEC explained that "the rule does not in any way impinge on a wide range of expressive conduct in connection with elections. For example, the rule imposes no restrictions on activities such as making independent expenditures to express support for candidates, volunteering, making speeches, and other conduct."[36] This reasoning tracks that of *Citizens United*, where the Court ruled that "independent expenditures do not lead to, or create the appearance of, quid pro quo corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption."[37]

Clearly, the proposed Draft Amendments and current rule must explicitly permit contributions in support of independent expenditures.

* * *

CCP respectfully requests that the Board reconsider these elements of the Draft Amendments, and thanks for Board for the opportunity to comment. Should you have any questions or desire CCP's assistance in modifying the Draft Amendments further, please contact me at 703-894-6800 or adickerson@campaignfreedom.org.

Very truly yours,

Allen Dickerson
Legal Director

[36] Political Contributions by Certain Investment Advisers, 75 Fed. Reg. 41018, 41024 (July 14, 2010).
[37] 558 U.S. at 360 (internal citation omitted).

Law Offices of Dave A. Sanchez

November 5, 2014

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2014-15 Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

I appreciate the opportunity to provide comments to the Municipal Securities Rulemaking Board (MSRB) on the proposed amendments to MSRB Rule G-37, which would extend its provisions to municipal advisors.

These comments are informed by a background that includes, amongst other relevant experience, advising registered municipal advisors with respect to their compliance obligations and serving as general counsel to a municipal broker-dealer that was also registered as a municipal advisor.

Overall, the MSRB has done an excellent job adapting this very important rule to address practices by municipal advisors that involve corruption or the appearance of corruption, undermine the integrity of the municipal securities market, increase costs borne by issuers and investors, and create artificial barriers to competition amongst municipal advisors. The MSRB should continue to bear in mind that the business of being a municipal advisor and the business of being a dealer (or an investment adviser) is not identical and therefore there is no baseline reason to presume that common standards are required for dealers, municipal advisors and investment advisers.

This letter will begin with a few general comments about the proposed rule and then provide responses to selected questions posed by the MSRB. It will conclude with a few suggestions regarding the mechanics of rule compliance incorporated into the associated recordkeeping rules.

GENERAL COMMENTS

The MSRB should maintain the *de minimis* contribution limit of $250 and to the ban on contributions to candidates for whom the persons covered by such rule are not entitled to vote. Unlike some of the recent Supreme Court rulings on political contributions, G-37 is narrowly tailored to only affect persons who seek specific types of business with municipal entities and not citizens at large. For over two decades G-37 has proven to be an important tool in enhancing free and fair competition in the municipal securities market and regulated entities have generally supported its existing provisions and even called for it to be extended to bond ballot campaigns. Changing the contribution limits would also provide a distinct and unfair advantage to large financial services firms over smaller firms.

The MSRB should continue to enhance the searchability of Form G-37s submitted to the Board. One of the stated purposes of existing Rule G-37(e) is to promote public scrutiny of the contributions made by regulated entities. Proposed Rule G-37 requires the MSRB to "make public a copy of each Form G-37 received from any regulated entity. Although the MSRB has greatly improved the availability of these forms by making them available on EMMA, they are still not easily searchable and there is no ability for members of the public to search such forms by the name of a municipal entity, individual officials or by the name of a bond ballot campaign. Indeed, the MSRB still allows such forms to be submitted in paper. The MSRB currently has a sizeable surplus which even allowed them to refund fees. The MSRB should devote a portion of such funds to improving the ability of regulators and the public to scrutinize these political contributions by allowing searches to be conducted based on the name of a municipal entity, individual officials or by the name of a bond ballot campaign. This would greatly enhance the goal of transparency and public scrutiny which is at the core of Rule G-37.

RESPONSES TO SPECIFIC QUESTIONS POSED BY THE MSRB

4) Do commenters agree that the requirements of Rule G-37 have been effective in combating corruption or the appearance of corruption in connection with the awarding of municipal securities business to dealers?

Yes. The requirements of Rule G-37 have been effective in combating corruption or the appearance of corruption in connection with the awarding of municipal securities business to dealers? They have also promoted more free and fair competition amongst dealers. These requirements should be extended to municipal advisors.

5) Does the consolidation into a single rule of the "pay to play" provisions that apply to dealers and the draft provisions that would apply to municipal advisors aid in or detract from understanding the rule and the parallels between the "pay to play" regimes for dealers and municipal advisors?

The consolidation of these provisions into a single rule aids in understanding the rule and the parallels between the pay-to-play regimes. Although few of the rules of the MSRB should apply in a similar fashion to dealers and municipal advisors, Rule G-37 is one rule where largely common standards are appropriate.

8) Are the recordkeeping and disclosure requirements that apply to dealers in existing Rule G-37 and the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain and make publicly available information that is relevant for the purposes of Rule G-37? Are there additional costs or benefits to the recordkeeping or disclosure obligations that the MSRB should consider?

Certain of the recordkeeping requirements that will apply to both dealers and municipal advisors are more burdensome or confusing than necessary in order to achieve the regulatory purpose of Rule G-37 as discussed in more detail below. As noted above, the MSRB could improve the

functionality of the publicly available information without imposing any additional burden on regulated entities by improving the searchability of Form G-37 for regulators and the public.

9) What would be the effect of draft amended Rule G-37 for dealers that have instituted long-standing compliance programs? Do dealers anticipate that any of the possible changes to Rule G-37 may increase or decrease either the occurrence of, or the perception of, "pay to play" practices in the municipal securities market?

It appears that the proposed amended Rule G-37 would not affect long-standing compliance programs for dealers who are not municipal advisors (other than possibly requiring edits to policies and procedures to encompass new defined terms. Dealers who also function as municipal advisors should be able to easily amend existing compliance programs to accommodate the newly regulated activity because the fundamental operations of Rule G-37 are not different for municipal advisory activity.

14) Is the cross-ban applicable to dealer-municipal advisors in certain circumstances appropriate? Do commenters believe that a contribution from persons or entities associated with one line of business of a dealer-municipal advisory firm (i.e., the municipal securities or the municipal advisory line of business) and the awarding of business to the other line of business within the same firm constitute quid pro quo corruption or give rise to the appearance thereof?

Yes, the cross-ban is appropriate. Many individual persons in dealer-municipal advisory firms engage in both dealer and municipal advisory activity and even if they do not, the business lines can be very closely related. A contribution from persons or entities associated with one line of business of a dealer-municipal advisory firm (i.e., the municipal securities or the municipal advisory line of business) and the awarding of business to the other line of business within the same firm will usually constitute quid pro quo corruption or give rise to the appearance thereof.

SPECIFIC COMMENTS ON RECORDKEEPING REQUIREMENTS

MSRB Rule G-8(a)(xvi) and MSRB Rule G-8(h)(iii)

The MSRB should provide clarification as to whether Rule G-8(a)(xvi) (A) and (B) and MSRB Rule G-8(h)(iii) (A) and (B) require separate records to be maintained specifically for G-37 purposes since this information is already required to be maintained by other books and records requirements.

MSRB Rule G-8(a)(xvi) (J) and MSRB Rule G-8(h)(iii) (J)

Because the MSRB requires already requires dealers and is proposing to require municipal advisors to maintain copies of Form G-37 that are submitted, it should revise the rest of the books and records requirements associated with Rule G-37 to not require maintenance of

information that is included on that Form G-37. In addition, the MSRB should make clear that the availability of Form G-37 on EMMA satisfies this maintenance requirement.

Ideally, the bulk of the information otherwise required by Rule G-8(a)(xvi) and MSRB Rule G-8(h)(iii) would be included on Form G-37. Improvements to the design of Form G-37 coupled with elimination of much of the duplicative books and records requirements of MSRB Rule G-8(a)(xvi) and MSRB Rule G-8(h)(iii) would greatly reduce the regulatory burden on the thousands of dealers and municipal advisors subject to such requirements.

Finally, the MSRB should not allow the submission of paper versions of Form G-37 and delete the requirement to maintain certified or registered mail receipts.

MSRB Rule G-9 (h)(ii) and (iii)

These records should only be required to be maintained for five years. The extension of these requirements to six years is not supported by any regulatory purpose. The MSRB has not articulated any examination and enforcement purpose to support this longer timeframe, particularly because such longer timeframe is not tied to any statute of limitations applicable to municipal advisors who are not FINRA members. As such, these longer timeframes create confusion and an undue burden without any regulatory purpose.

I appreciate the opportunity to provide these comments. If you have any questions regarding these comments please feel free to contact me by phone at the number provided on the comment submission form.

Sincerely,

/s/

Dave A. Sanchez

Comment on Notice 2014-15

from Hardy Callcott,

on Tuesday, September 09, 2014

Comment:

I request that my comment letter on the MSRB's prior proposal concerning regulation of political contributions by municipal advisors be considered as part of the record in this rulemaking. See http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~/media/Files/RFC/2011/2011-04/Callcott.ashx. As was true in 2011, unless the MSRB conforms Rule G-37 to the higher contribution limits contained in SEC Rule 206(4)-5, there is no hope that the proposed limits in Rule G-37 could be deemed "narrowly tailored to achieve a compelling government interest". This conclusion is reinforced by the Supreme Court's decision earlier this year in McCutcheon v. FEC, 572 U.S. ___ (2014). The McCutcheon Court's holding that "The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse" perforce applies to the MSRB's proposal, in particular the portion of the MSRB's proposal that municipal advisors not be permitted to contribute at all to candidates for whom they are not entitled to vote. As the McCutcheon Court stated, such "limits deny the individual all ability to exercise his expressive and associational rights by contributing to someone who will advocate for his policy preferences" and are therefore contrary to the First Amendment. For the reasons expressed in my prior letter and here, in order to survive constitutional challenge, the MSRB should conform Rule G-37, including the existing portions of the rule applying to municipal securities dealers, to the more narrowly tailored provisions of SEC Rule 206 (4)-5.

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October 1, 2014

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2014-15

The National Association of Independent Public Finance Advisors ("NAIPFA") appreciates this opportunity to provide comments in connection with Municipal Securities Rulemaking Board ("MSRB") Notice 2014-15 – Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors (the "Notice").

Comments

As NAIPFA has expressed in the past, we support common sense rulemaking that is designed to protect the interests of municipal entities and the public. Numerous NAIPFA firms have unilaterally and without MSRB rulemaking determined to limit their political contributions because of the potential conflicts of interest associated with such actions. In addition, we have in the past supported even more stringent political contribution limitations than are currently in place for broker-dealers, including our support for an outright ban on contributions to bond ballot campaign committees.

In light of the foregoing, NAIFPA supports the draft amendments to MSRB Rule G-37 contained within the Notice in their current form and are opposed to any increase in the de minimis contribution amount of $250.

Sincerely,

Jeanine Rodgers Caruso

Jeanine Rodgers Caruso, CIPFA
President, National Association of Independent Public Finance Advisors

cc: The Honorable Mary Jo White, Chairman
The Honorable Kara Stein, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Michael Piwowar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

October 1, 2014

Ronald W. Smith,
Corporate Secretary,
Municipal Securities Rulemaking Board,
1900 Duke Street, Suite 600,
Alexandria, Virginia 22314

Re: Comment on Draft Amendments to MSRB Rule G-37 to Extend its Provisions to Municipal Advisors (MSRB Regulatory Notice 2014-15)

Dear Secretary Smith:

We, the undersigned, are pleased to comment in support of the MSRB's proposed refinement of Rule G-37 that expands the reach of the rule to municipal advisors. The undersigned include Public Citizen, Free Speech For People, John Harrington of Harrington Investments, New Progressive Alliance, AFSCME, ReFund America Project of the Roosevelt Institute, U.S. PIRG, the Consumer Federation of America, and Americans for Financial Reform.

Public Citizen is a consumer and good government advocacy organization that has been intimately involved in helping design, promote and enforce pay-to-play laws arround the country at both the federal, state and local levels, including MSRB Rule G-37 and the more recent Rule 206(4)-5. Public Citizen is a party to the case defending 2 U.S.C. 441c, the federal pay-to-play law (*Wagner v. FEC*) and plans on seeking to help defend Rule 206(4)-5, if this case continues to work its way through the courts (*New York State Republican Committee v. SEC*). Public Citizen is a nonprofit organization with more than 350,000 members and supporters.

Free Speech For People is a national non-partisan, non-profit organization that works to restore republican democracy to the people, including through legal advocacy in the law of campaign finance. Free Speech For People filed an amicus brief in support of the SEC's pay-to-play rule, Rule 206(4)-5, in *New York State Republican Committee v. SEC*, No. 14-CV-01345, and plans to continue help defending Rule 206(4)-5. Free Speech For People's thousands of supporters around the country engage in education and non-partisan advocacy to encourage and support effective government of, by, and for the American people.

Harrington Investments, Inc. (HII) has been a leader in Socially Responsible Investing and Shareholder Advocacy since 1982. HII is dedicated to managing portfolios for individuals, foundations, non-profits, and family trusts to maximize financial, social and environmental performance. John Harrington, Ph.D., is the President and CEO.

The New Progressive Alliance (NPA) is a grassroots organization founded in 2010, entirely online, offering a leading voice for Progressive ideals and reform in America. NPA is a fully volunteer organization that supports the "United Platform."

The American Federation of State, County and Municipal Employees (AFSCME) is the nation's largest and fastest growing public services employees union with more than 1.6 million working and retired members. AFSCME's members are primarily public sector employees in hundreds of different occupations.

ReFund America Project is a project of the Roosevelt Institute. ReFund America tackles the ongoing impact that the financial crisis has had on the financial health of America's cities. Saqib Bhatti is Director of the Project and Fellow at the Roosevelt Institute.

U.S. PIRG – Public Interest Research Groups – is a federation of independent, state-based, citizen-funded organizations that advocate for the public interest. The organization employs investigative research, media exposés, grassroots organizing, advocacy and litigation. Across the country, state PIRGs employ close to 400 organizers, policy analysts, scientists and attorneys, and are active in 47 states, with a federal lobby office in Washington, D.C.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. CFA is a research, advocacy, education, and service organization.

Americans for Financial Reform (AFR) is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR is working to lay the foundation for a strong, stable, and ethical financial system.

A. The Importance of Rule G-37 in Protecting the Integrity of Securities Markets and Government Contracts

Generally, Rule G-37 is intended to combat pay-to-play practices. Pay-to-play describes practices where a person makes cash or in-kind political contributions to help finance the election campaigns of state or local officials for the purpose of unduly influencing the award of government contracts.

Pay-to-play scandals are sadly frequent. The Securities and Exchange Commission detailed some of these schemes involving securities markets in a 2010 report.[1] The undersigned have commented extensively on pay-to-play schemes in a number of venues and as they apply to a variety of government contracts. For example, in 2012 Public Citizen developed a report on "Pay-to-Play Laws in Government Contracting and the Scandals that Created Them" (*See* Attachment A). This year, Free Speech For People filed an amicus brief in support of the SEC's pay-to-play rule, Rule 206(4)-5, in *New York State Republican Committee v. SEC*, No. 14-CV-01345, and plans to continue help defending Rule 206(4)-5. (See http://goo.gl/sypdUi).

The potential for corruption in the interplay between campaign contributions and government contracts flows in both directions: businesses sometimes seek government favor through campaign contributions, and elected officials sometime extract campaign contributions from businesses with the lure of government favors. Without reasonable restrictions curtailing such behavior, pay-to-play can easily serve to undermine the integrity of the contracting process. When contracts involving state and municipal finance can be influenced by campaign contributions instead of what's best for taxpayers – or even raise the suspicion that the contracting process may have been tainted by campaign money – the result can be devastating. Whether valid or not, even the perception of trading campaign contributions for lucrative financial services contracts can undermine the integrity of the government contracting process. These scandals do not just damage the public's confidence in their government; they often end up hurting government officials, endangering otherwise promising careers, and causing the legitimate business community to think twice about engaging in government services.

One of the more effective restrictions against pay-to-play corruption is Rule G-37 of the Securities

[1] SEC release, "Political Contributions by Certain Investment Advisors", (2010), available at: http://www.sec.gov/rules/final/2010/ia-3043.pdf

and Exchange Commission, developed by its pragmatic former Chairman Arthur Levitt. This strong rule restricts campaign contributions from brokers to bond issuers for two years prior to contract negotiations through completion of the contract. Importantly, Rule G-37 also imposes a special reporting requirement on brokers so that the rule can be easily monitored and enforced.

When the SEC approved Rule G-37 in 1994, the agency explained it would "address the real as well as perceived abuses resulting from 'pay to play' practices in the municipal securities market."[2] The current Rule G-37 prohibits municipal finance professionals and dealers from soliciting or coordinating contributions to a government official with influence over selecting municipal securities dealers where the dealer is seeking to win that municipal securities business, except for a *de minimis* contribution to candidates in one's own district. This prohibition extends to dealer contributions to a political party in the state. The rule contains an an anti-circumvention provision prohibiting direct or indirect contributions. To help with surveillance, the rule requires public disclosure of contributions and municipal securities business which is available on the MSRB Electronic Municipal Market Access (EMMA) website.

The MSRB authority to initiate needed reforms is well grounded in law. Congress authorized the SEC and its subordinates such as the MSRB to adopt prophylactic measures as provided in the Investment Advisors Act of 1940.[3] In *Blount v. SEC*, the court concluded that Rule G-37 was closely drawn by affecting relations only between two potential parties where undue influence peddling could pose a problem: "the underwriters and their municipal finance employees on the one hand, and officials who might influence the award of negotiated municipal bond underwriting contracts on the other."[4]

The undersigned applaud the proposed improvements to the MSRB's rule that expand the contribution restrictions to municipal advisors. By recognizing that municipal advisors play a key role in the selection of underwriting and other municipal funding decisions, the MSRB's expansion of the scope of the rule will help promote the integrity of the contracting process. This will serve to reduce costs to taxpayers as decisions by elected officials will be less prone to the vicissitudes of election campaign finance.

B. Grounds for Expanding Coverage of Rule G-37

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 expanded the scope of the Securities and Exchange Act of 1934 by calling upon the SEC to regulate municipal advisors from participating in fraudulent or manipulative business dealings. The proposed rule changes conform to the law's requirements.

There is a great deal of evidence that financial advisors often make use of the pay-to-play system in an effort to fraudulently win financial investment contracts. Advisors played a key role in fraudulently manipulating the awarding of contracts in connection to the New York State Common Retirement Fund.[5] The SEC has taken enforcement actions against the former treasurer of Connecticut for fraudulently awarding investment contracts to private equity fund managers in

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[2] *See* MSRB, "SEC Rule G-37 Approval Order" at 17624.

[3] 15 U.S.C. 80b-6(1).

[4] Blount v SEC, 61 F.3d 938 (1995), available at: http://caselaw.findlaw.com/us-dc-circuit/1320521.html

[5] New York Attorney General Eric Schneiderman, "Former Controller Alan Hevesi Sentenced to Up to Four Years in Prison for Role in Pay-to-Play Pension Fund Kickback Scheme," (April 15, 2011), available at: http://www.ag.ny.gov/press-release/former-comptroller-alan-hevesi-sentenced-four-years-prison-role-pay-play-pension-fund

exchange for campaign contributions and other payments, and noted similar cases prosecuted by state authorities in New Mexico, Illinois, Ohio and Florida.[6] These cases, and others, are why the Dodd-Frank law expanded coverage to include municipal advisors.

Furthermore, expanding the scope of the pay-to-play rule to capture municipal advisors also brings Rule G-37 in line with recent changes to Rule 206(4)-5 of the Investment Advisors Act. Originating out of the pension fund scandals in New York, Rule 206(4)-5 prevents investment advisors from seeking to influence government officials' awards of financial management advisory contracts through political contributions by prohibiting them from providing advisory services for compensation to government clients for two years after the advisor or certain of its executives or employees ("covered associates") make a contribution to a candidate or public official of a government entity who is or will be in a position to influence the award of advisory business. Establishing a comparable scope in the reach of Rule G-37 will standardize the regulatory regime over financial services, helping to reduce confusion within the financial services sector.

Similar to investment advisors, municipal advisors are conventionally considered consultants who advise state and local governments on bond issuance, use of derivatives and other related financial matters. The Exchange Act defines the term "municipal advisor" to mean a private sector agent that: (1) provides advice to or on behalf of a municipal entity with respect to municipal financial products; or (2) undertakes a solicitation of a municipal entity.[7] The definition of municipal advisor includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that provide municipal advisory services.[8]

Until the 2010 approval of the Dodd-Frank Wall Street Reform Act, municipal advisors were essentially unregulated. They were not required to register with the SEC. Section 975 of Dodd-Frank now requires municipal advisors to register.[9] As of 2013, the SEC reported there were 1,130 registered municipal advisors.[10] Those who have registered can be viewed at the SEC web page.[11] We note that municipal dealers commonly serve also as municipal advisors. Alone, this argues for the new G-37 refinement to address the obvious conflict that a municipal advisor who is also a dealer may face in its recommendations. The registration form includes useful information about the integrity of the firms under the section entitled "Disciplinary Information." For example, JP Morgan Securities, one of the larger municipal dealers and advisors, answers "yes" to whether it has been charged with a felony or has made false statements to the SEC.[12]

C. Suggestions for Further Improvement Beyond the Proposed Rule Changes

We have reviewed the proposed language that expands the contribution restrictionss and disclosure requirements that now apply to municipal securities dealers to include municipal securities advisors and find it generally sound.

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[6] *See* 75 Fed. Reg. at 41,020.

[7] *See* 15 U.S.C. 78o-4(e)(4)(A).

[8] *See* 15 U.S.C. 78o-4(e)(4)(B).

[9] *See* SEC, "Registration of Municipal Advisors: Frequently Asked Questions," (May 19, 2014), available at: http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf

[10] *See* SEC, "Registration of Municipal Advisors: Final Rule," available at: http://www.sec.gov/rules/final/2013/34-70462.pdf

[11] SEC web page is available at: https://tts.sec.gov/MATR/index.html

[12] See registration statement for JP Morgan Securities, available at: https://tts.sec.gov/MATR/matr-00000618.html

Specifically, we welcome the expanded definition of municipal officials. Under the current rule, the term "official of an issuer" is restricted to any person who, at the time of the contribution, was an incumbent, candidate or successful candidate: (i) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business by the issuer; or (ii) 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 dealer for municipal securities business by an issuer. The proposed draft refines Rule G-37 by replacing the term "official of an issuer" with the new defined term "official of a municipal entity," which takes into account the possibility that an official may have the ability to influence the selection of a dealer but not a municipal advisor, or vice versa. We heartily endorse this improvement.

1. Artifical Distinction Between Dealers and Advisors Within the Same Firm

However, we take exception to the draft rule under (b)(i) as it applies to firms that offer both advisory and dealer services. In Question 12 of the rulemaking proposal, the MSRB asks: "Are the contributions that would not result in a ban on municipal securities business or municipal advisory business under the draft amendments appropriate in light of the expanded scope of persons from whom a contribution may trigger a ban?"

The proposed rule permits contributions from securities dealers to public officials that only have influence over the selection of securities advisory services at the same firm. It also permits contributions from securities advisors to officials that only have influence over the selection of securities dealers at the firm. (Only where the official has influence over both services is a dealer-advisory firm barred from making contributions and securing business.) This simply invites firms to create legal fictions for contribitons between its dealer and advisory services, which would be nearly impossible to monitor. It would be extremely difficult to ensure that the contributions of one division at a firm were not known to the marketing agents at another division of the firm. Likewise, it defies reason to believe a public official might not solicit contributions from one division of a firm even though decisions by the official could only benefit another division of the same firm.

Moreover, allowing an artifical distinction between dealers and advisors of a single firm provides a distinct and unfair advantage to large financial services firms over smaller firms. Smaller firms that specialize exclusively in either advisory or dealer services that are prohibited from making campaign contributions will be disadvantaged when they compete against larger firms that offer both dealer and advisory services that make political contributions to the same officials. We ask that the draft rule be amended to prohibit any contribution from a dealer-advisory firm to an official with either dealer or advisory selection influence.

2. Problem of PAC Contributions from Large Banks and Diverse Firms

In the same vein, we are concerned with political giving by large firms where the municipal securities business is but one of numerous distinct businesses. Major firms including large banks have entered the municipal finance underwriting business in the last two decades. The MSRB allows these large banks to make contributions via political action committees (PACs) to the very individuals that the MSRB otherwise bars a firm's municipal finance subsidiary from making. This permission derives from the MSRB existing and proposed rule regarding the definition of "control," as described in (b)(i).

The following example illustrates the deficiency with such "control" language. A filing by JP Morgan Securities on the MSRB EMMA website shows that the firm peformed underwriting services for the Delaware River Authority in 2013. In answer to the question about whether it made

political contributions to any municipal finance official related to this service, JP Morgan Services reports "none."[13] At the same time, the JP Morgan PAC filing at the Federal Election Commission (FEC) shows a contribution to State Treasurer Chipman Flowers in 2013.[14] Further research shows that JP Morgan officials helped Flowers with his campaign.[15] (We note that JP Morgan faced a fine for using consultants to obtain municipal business in the past.[16])

Presumably, the JP Morgan PAC feels justified in making the contributions because the firm determines that the PAC contributions are not "controlled" by the securities affiliate, JP Morgan Securities. However, such a determination is made out of the public eye. The Federal Election Commission does not require PACs to disclose internal decisionmaking processes nor to explain how contributions are directed. Consequently, it is not possible for the public to understand how these decisions are made. Further, it is not clear how the Rule G-37 enforcement agency (FINRA) would determine whether or not JP Morgan Securities exercised control over the PAC contributions, as it requires no filings.

MSRB provides limited guidance on the anti-circumvention rule that prohibits evasion or the use of conduits.[17] Firms must erect "information barriers" to guard against a securities underwriter signalling those making contribution decisions about worthy beneficiaries.[18] We find such guidance insufficient. Political contribution decisionmakers at a firm such as JP Morgan with prodigeous municipal securities business need not be told by any front-line securities underwriters that a contribution to the Delaware Treasurer might be helpful in landing business at the Delaware River Authority. The same is true for the dozens of other contributions that the JP Morgan PAC makes and associated underwritings that its securities affiliate secure. Short of the use of subpoenas, we believe that the current disclosure and reporting apparatus does not provide the appropriate deterrent to prevent evasion. We discuss remedies below.

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[13] EMMA website, available at: http://emma.msrb.org/FileHandler.ashx?fileId=ER978160

[14] JP Morgan & Chase Company, "Political Action Committee 2013 Activities Report," available at: http://www.jpmorganchase.com/corporate/About-JPMC/document/Political-Activities-Statement-revision-March2014.pdf

[15] Don Mell was a Delaware lobbyist for JPMorgan Chase who was on the host committee for a Flowers fundraiser in Washington. Jonathan Starkey, "Flowers Banking on Own Wallet," *The News Journal* (Feb. 26, 2014), available at: http://www.delawareonline.com/story/news/politics/2014/02/26/flowers-banking-on-own-wallet/5853919/

[16] FINRA fines JP Morgan in case stemming from 2007 for using consultants to get municipal business, available at: http://disciplinaryactions.finra.org/viewdocument.aspx?DocNB=12761

[17] MSRB guidance expands on this. Rule G-37(d) provides that: "No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule."

While Rule G-37 was adopted to deal specifically with contributions made to officials of issuers by dealers and municipal finance professionals, and political action committees ("PACs") controlled by dealers or MFPs, this section of the rule also prohibits MFPs and dealers from using conduits—such as, but not limited to parties, PACs, affiliates, consultants, lawyers or spouses—to contribute indirectly to an issuer official if such MFP or dealer can not give directly to the issuer without triggering the ban on business. *See* MSRB, "Questions Concerning Contributions and Prohibitions on Municipal Securities Business," available at: http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G37-Frequently-Asked-Questions.aspx

[18] MSRB Notice 2010-57, "Reminder: Interpretation of Dealer-Controlled PACs Under Rule G-37" (Dec. 17, 2010) available at: http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-57.aspx

3. Need for Comprehensive Disclosure Requirements

The MSRB asks in its request for comment: "8) Are the recordkeeping and disclosure requirements that apply to dealers in existing Rule G-37 and the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain and make publicly available information that is relevant for the purposes of Rule G-37?"

At the very least, we recommend that MSRB require that firms disclose all political contributions made by any affiliate on its EMMA website. In the case of large firms with associated political action committees, we ask that the EMMA filing require that the firm publish its PAC contributions. Further, we ask that the contributions be itemized in a column adjacent to relevant underwritings. In the specific case referenced above concerning the Delaware River Authority and the JPM PAC, the column would then list contributions to any Delaware candidate running for an office with authority over awarding a contract to JP Morgan. None of this information would require any confidential or new information not already provided in some other public platform. The clerical work of cross-referencing would be minimal.

Ideally, Rule G-37 will eventually be reformed to prohibit such contributions altogether. Given this guidance and the MSRB's welcome intent of detering evasion, we urge that "associated with" replace "controlled by" in the rule text. Such contributions either constitute or create the appearance of a conflict of interest or undue influence peddling. We believe such a prohibition would be welcome by the securities underwriting industry more broadly, as those not affiliated with a large bank or large firm are currently disadvantaged by the current exemptions to the contribution restrictions.

D. Conclusion: Proposed Changes to Rule G-37 Are Both Constructive and Appropriate, But Could Be Strengthened Even Further

We welcome the improvements proposed in this rulemaking, which will appropriately expand the scope of Rule G-37 to include municipal advisors. We also encourage the MSRB to treat securities dealers and municipal advisors of a firm as a single entity with a common interest for purposes of reining in pay-to-play practices, and to provide greater balance between large banks and other large businesses that offer multiple services with smaller firms that focus just on single covered activities within the municipal bond business. At the very least, we urge the MSRB to expand its disclosure requirements so that we may monitor whether indeed improper influence peddling is occuring through campaign contributions from those associated with the large financial services firms.

For questions, please contact Dr. Craig Holman, Government Affairs Lobbyist for Public Citizen's Congress Watch, at cholman@citizen.org, or Bartlett Naylor, Financial Policy Advocate for Public Citizen's Congress Watch, at Bnaylor@citizen.org.

Thank you for the opportunity to comment.

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Attachment A

MEMORANDUM

June 26, 2012

RE: Pay-to-Play Laws in Government Contracting and the Scandals that Created Them

FROM: Craig Holman, Ph.D., government affairs lobbyist; and Michael Lewis, researcher; Public Citizen

Introduction

Pay-to-play is the all-too-common practice of an individual or business entity making campaign contributions to a public official with the hope of gaining a lucrative government contract. Usually, though not always, pay-to-play abuses do not take the form of outright bribery for a government contract. Rather, pay-to-play more often involves an individual or business entity buying access for consideration of a government contract.

Throughout federal, state and local jurisdictions, it is widely believed that making campaign contributions to those responsible for issuing government contracts is a key factor in influencing who wins those contracts. In many jurisdictions across the nation, there is considerable evidence substantiating that a pay-to-play culture exists in the government contracting process. Actual sting operations have recorded such exchanges of contracts to campaign contributors, for example, by former Governors Rod Blagojevich in Illinois and John Rowland in Connecticut. Just as tellingly, strong correlations between campaign contributors and those who were awarded government contracts under the local administrations of former Mayors Jeremy Harris in Honolulu and John Street in Philadelphia have led to corruption investigations and convictions. The Securities and Exchange Commission (SEC) has documented numerous cases of individual investment managers orchestrating campaign contributions in exchange for lucrative contracts to manage hedge funds or pension funds. And, of course, surveys of businesses have shown that many contractors believe they must pay to play and that publics frequently perceive such a corrupt culture in government contracting.

Following several high profile scandals and numerous convictions, the movement to prevent corruption and promote transparency in government contracting continues to hold momentum. A 2010 article by *Think New Mexico* on pay-to-play laws in the states said: "Perhaps the most compelling reason to implement the reforms is the difference they have begun to make in the political cultures of other states."[19] Former U.S. Attorney Christopher Christie (now New Jersey governor) described the situation of campaign contributors routinely winning government contracts in New Jersey, which led to the state's pay-to-play law: "Contracts are being given for work that isn't needed. Or second, contracts are given to people who aren't qualified to do the job, so the job isn't done right and they have to come back and do the work again."[2] And these laws have fairly consistently been upheld by the courts, starting with the 1995 *Blount v. SEC* decision and more recently in the 2010 *Green Party of Connecticut v. Garfield* decision.

[19] Nathan, Fred, "Restoring Trust: Banning Political Contributions from Contractors and Lobbyists," *Think New Mexico* (Fall 2009), 7.

The federal government, the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, 15 states and dozens of localities have implemented pay-to-play laws, rules or ordinances that restrict campaign contributions from government contractors. These include federal statute 2 U.S.C. 441c, MSRB Rule G-37, California, Connecticut, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Nebraska, New Jersey, New Mexico, Ohio, South Carolina, Vermont, Virginia, West Virginia, and several dozen localities ranging from Los Angeles and San Francisco (CA), Philadelphia (PA), Newark (NJ), to New York City (NY). Many other states and localities have established special disclosure requirements for government contractors. (For a description of key components of these pay-to-play laws, *see* Appendix B: "pay-to-play Restrictions on Campaign Contributions from Government Contractors, 2012").

This memorandum outlines the nature of the federal and state pay-to-play laws that affect campaign contributions from government contractors and documents the scandals and corruption that gave rise to these government contracting reforms. Though each law is somewhat unique in scope and in their restrictions, most of these pay-to-play laws define "government contractors" to include both business entities as well as individuals who receive contracts with the federal, state or local governments. Many of the reforms were in response to large campaign contribution scandals associated with a business entity, but many other pay-to-play reforms were prompted by even relatively small contributions from individuals seeking favoritism in the contracting process or by coordinated giving of individuals affiliated with the contracting entities. What this case record demonstrates is that the awarding of government contracts can, and has been, influenced by campaign contributions, large and small, from business entities as well as from individuals seeking contracts.

Case Studies

2 U.S.C. 441c – Ban on Campaign Contributions from Federal Contractors

In 1939, New Mexico Senator Carl Hatch introduced "An Act to Prevent Pernicious Political Activities," today known as the Hatch Act, to ensure a professional civil service, preserve respect for government, and protect government employees from being coerced into political activity.[3] The 1940 amendments to Hatch Acts provided a series of restrictions on campaign contributions from federal workers, amended in 1948[4] and again in 1971.

While the United States had a long history of political machines and a spoils systems, the Works Progress Administration (WPA) of the New Deal sparked immense corruption allegations. Despite President Roosevelt's insistence that "we cannot hurt our enemies or help our friends… we have to treat them all alike… in carrying out this work,"[5] proponents of the Hatch Act cited abuses by New Deal administration officials, via government workers and their ability to procure contracts, in their defense of the act. Senator Hatch claimed that "destitute women on sewing projects … [had] to disgorge" part of their wages as political tribute and that some WPA workers deposited $3-$5 of their $30/month pay under the "Democratic donkey paperweight on the supervisor's desk."[6] In debating the Hatch Act, a U.S. Representative said: "I am for [the Act] because I sincerely believe that it is restoring to millions of WPA workers who have been

[2] "Officials' Crimes Cost N.J., Taxpayers," *Trenton Times* (Aug. 19, 2003).

[3] Bloch, Scott, "The Judgment of History: Faction, Political Machines, and the Hatch Act," *University of Pennsylvania Journal of Labor and Employment Law* (Winter 2005).

[4] 18 U.S.C. § 611

coerced and abused in recent years their rights as American citizens."[7] Another Congressman stated: "What is going to destroy this Nation, if it is destroyed, is political corruption, based upon traffic in jobs and in contracts, by political parties and factions in power.[8]

During this time, allegations arose of the "Democratic Campaign Book" scandal, in which federal contractors were "required" to buy multiple campaign books at inflated prices. In the Hatch Act debate, a Representative said: "[Each contractor was] reminded of the business he had received from the government and the prospect of future favors was dangled before him. He was then shown the Democratic campaign book… and told that he was expected to purchase."[9]

During the debate on the 1940 amendments, several members of Congress attempted to characterize federal contractors as federal employees. Senator Brown said he "would apply the same principle [that partisan political concerns would naturally motivate patronage workers and business entities seeking tax advantages] … to contractors who are doing business with the government of the United States."[10] While Senator Brown's proposal failed, the Judiciary Committee report called for prohibiting "any person or firm entering into a contract with the United States… or performing any work or services for the United States… if payment is to be made in whole or part from funds appropriated by Congress… to make such contribution to a political party, committee or candidate for public office or to any person for any political purpose or use."[11] That provision became the predecessor of the provision restricting campaign contributions from federal contractors under the 1971 Federal Election Campaign Act law.

Following the financial scandals of the Nixon Administration, campaign contributions and expenditures by all entities were strictly regulated under the Federal Election Campaign Act of 1971 (FECA), and as subsequently amended. These limits were subjected to rigorous constitutional scrutiny by the Supreme Court in *Buckley v. Valeo*. The Court upheld the FECA's limits on contributions, but overturned its expenditure limits as unconstitutional infringements on First Amendment speech.

The constitutional defects in the 1974 FECA were corrected in the Act's 1976 amendments, which also transferred nine criminal statutes dealing with campaign financing from the criminal code (former 18 U.S.C. §§ 608 and 610-617) to the FECA, including the prohibition on contributions and expenditures by government contractors to any party, committee or candidate in federal elections.[12]

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[5] Leupold, Robert, "The Kentucky WPA: Relief and Politics, May-November 1935," *Filson Club History Quarterly*, Vol. 49, No. 2, (April, 1975).
[6] 84 Cong. Rec. 9598
[7] 86 Cong. Rec. 9632
[8] 84 Cong. Rec. 9616
[9] *id*. at 9599
[10] 86 Cong. Rec. 2580
[11] H.R. Rep., No. 76-3, vol. 3, (June 4, 1940), 12.

The extent of the pay-to-play problem at the national level dramatically unfolded in 1973 when Vice-President Spiro T. Agnew was forced to resign after being accused of pocketing over $100,000 in campaign gifts in exchange for influencing the award of state and county contracts to seven engineering firms and one financial institution. In the mid-1970's reports of political corruption also emerged from Georgia, Indiana, Ohio, Louisiana, New Jersey and Kansas where public officials allegedly influenced the awarding of government contracts in return for large campaign gifts.

Other pay-to-play fundraising scandals of the Nixon Administration were exposed in graphic Senate testimony in the aftermath of the Watergate scandal. Several officers of major corporations with government contracts told the Committee that they illegally contributed to President Nixon's reelection campaign after being approached by Maurice Stans, the former Secretary of Commerce, and Herbert Kalmbach, President Nixon's personal attorney. The corporate executives claimed that the contributions were made to avoid possible government retaliation for not giving. Defense contractors also reported that they were subject to high-level requests for campaign funds; the suggested amount for the contribution was $100,000 but requests were scaled down for smaller firms. This pattern of aggressive fundraising by incumbent officeholders during the 1972 presidential elections prompted the observation that: "Ironically, the image of the greedy businessman as the corrupter seeking favors from the politician underwent change in the minds of some observers as reports of the kind of pressures applied came to light. Instead, the businessman became the victim, not the perpetrator, of what some saw as extortion."

Unfortunately, the 1976 FECA amendment inadvertently relaxed the 1948 prohibition on contributions from Federal government contractors. FECA, as amended, now permitted corporations and unions with Federal contracts to establish and operate PACs and to make campaign contributions and expenditures through these PACs.

Section 441c prohibits any person who is a signatory to, or who is negotiating for, a contract to furnish material, equipment, services, or supplies to the United States Government, from making or promising to make a political contribution. It has been construed by the FEC to reach only donations made or promised for the purpose of influencing the nomination or election of candidates for federal office. [11 C.F.R. § 115.2] The statute applies to all types of businesses, including sole proprietorships, partnerships, and corporations. It reaches gifts made from such firms' business or partnership assets. With respect to partnerships, however, the FEC has determined that section 441c does not prohibit donations made from the personal assets of the partners. [11 C.F.R. § 115.4]

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[12] 2 U.S.C. 441c (1976)

Section 441c applies only to business entities that have negotiated or are negotiating for a contract with an agency of the United States. Thus, the statute does not reach those who have contracts with nonfederal agencies to perform work under a federal program or grant. Nor does it reach persons who provide services to third party beneficiaries under federal programs that require the signing of agreements with the federal government, such as physicians performing services for patients under Medicare. Finally, officers and stockholders of incorporated government contractors are not covered by section 441c, since the government contract is with the corporate entity, not its officers.

The same statutory exemptions that apply to section 441b, which prohibits certain campaign contributions from all corporations and labor unions, also apply to section 441c. Thus, government contractors may make nonpartisan expenditures, may establish and administer PACs, and may communicate with their officers and stockholders on political matters. As with section 441b, the Justice Department only prosecutes aggravated and willful violations of section 441c. Less-aggravated violations are handled non-criminally by the FEC.

MSRB Rule G-37

The Municipal Securities Rulemaking Board (MSRB) approved one of the nation's strongest pay-to-play reforms in 1994, known as Rule G-37. MSRB Rule G-37 has since served as a model for the more recent strong pay-to-play reforms adopted in New Jersey, Connecticut and Illinois.

The original MSRB Rule G-37 prohibits brokers, municipal securities dealers (firms) and municipal finance professionals (individuals) from negotiating business with an issuer of securities and bonds within two years after the dealer or one of its municipal finance professionals (or their PACs) make a political contribution to an issuer official. Municipal finance professionals may make contributions up to $250 to issuer officials for whom they can vote per election without violating the pay-to-play rule. The Securities and Exchange Commission (SEC) ratified Rule G-37.

The original Rule G-37 and its amendments and supplementary rules were all adopted in the wake of a substantial body of evidence of pay-to-play corruption by both business entities and individuals seeking securities business and contracts. In defending Rule G-37 in court, the MSRB and the SEC documented that pay-to-play practices exist widely among both securities business entities, municipal finance professionals and financial advisors. In Blount v. SEC, the Commission argued, and the court agreed, that "there is virtually no dispute that pay-to-play is a widespread practice. The comment letters before the MSRB and the Commission were virtually unanimous in agreeing that municipal underwriters often must make political contributions if they are even to be considered for underwriting business."[13]

These comment letters noted that individual professionals and advisors as well as business entities and securities firms make campaign contributions in order to receive favorable treatment in the securities business from government officials. Several individuals or firms who would not otherwise make campaign contributions said they often feel compelled to do so in order to be considered for a contract. There is no distinction between the potentially corrupting influence of

[13] Brief of the Securities and Exchange Commission, Blount v. SEC, No. 94-1336 (July 5, 1994), 36-37.

campaign contributions from individual securities professionals and advisors as opposed to securities firms. Campaign contributions from any source seeking securities business to those issuing the contracts can exert undue influence.

William Blount, the petitioner in the case, conceded in a radio interview that campaign contributions "does assure you at least you can get access to someone's office," that "most likely [state and local officials] are gonna call somebody who has been a political contributor," and that officials will give securities business to their "friends" who have contributed.[14] Several years later, Blount himself would be convicted of pay-to-play corruption. While serving as Chairman of Alabama brokerage Blount Parrish & Co., William Blount provided $156,000 in cash, jewelry and other gifts to the President of the Jefferson County Commission in exchange for $6.7 million in securities business from the county. Blount was sentenced to four years in prison and fined $1 million.[15]

Loopholes in Rule G-37 – most notably the fact that many individual players in the securities market were not covered – pushed the MSRB and SEC to expand the scope of the pay-to-play restrictions. Individual consultants, advisors, family members of covered officials and individual associates of securities firms continued the pay-to-play practices.

Not long after Rule G-37 was adopted in 1994, political finance consultants and individual securities advisors multiplied in number "like amoebas."[16] At that time individual consultants and advisors were not covered under the pay-to-play rule. Many of these consultants and advisors made extensive campaign contributions to issuers of securities business and were winning contracts on behalf of their clients. In February 2003, for example, Bear Stearns was interested in a $1.6 billion New Jersey tobacco contract, and hired Jack Arseneault as a consultant. Arseneault was a close ally and fundraiser for then-Gov. James McGreevey. Bear Stearns paid Arseneault $280,000 to clinch the bond deal.[17]

The explosion in securities consultants and advisors to help win securities business led to growing suspicions that municipal firms were exploiting the ability of these individuals to win contracts through their pay-to-play practices, and so the MSRB and SEC made the first expansion of the scope of the pay-to-play restrictions explicitly to encompass these individuals in Rule G-38 adopted in 1996.[18]

When Richard Bodkin, the head of a bond trading firm, provided a $25,000 campaign contribution to New York gubernatorial candidate George Pataki on behalf of, and at the direction of, Bodkin's wife – and later received an underwriting contract from the then Gov. Pataki – the MSRB announced a new interpretation of Rule G-37. In this interpretation the

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[14] Radio interview, National Public Radio, Morning Edition (June 1, 1994).
[15] "SEC Wins Final Consent Judgments in Alabama Municipal Bribery Case," *BNA Money and Politics Report* (July 23, 2010).
[16] Alexandra Peers, "Wall Street Seems to have Found a New Way to get Muni Business," *Wall Street Journal* (Aug. 11, 1994).
[17] Martin Braun, "Bear Stearns Paid McGreevey Ally $250K for NJ Tobacco Deal Help," *The Bond Buyer* (May 22, 2003), 37.
[18] Jordan, Jon, "The Regulation of pay-to-play and the Influence of Political Contributions in the Municipal Securities Industry," *Columbia Business Law Review* (1999), 529.

agency declared that whosever name is on the check, regardless of whether the check derives from a joint account, that person will be deemed as having made the campaign contribution.[19] Of course, this interpretation does not directly address possible evasion of the law by funneling contributions through spouses. An October 2002 survey of political races in Massachusetts, New York and Pennsylvania found that spouses of municipal finance professionals covered by G-37 were actively making campaign contributions to those running for office who could influence the selection of municipal bond underwriters.[20]

In 2005, the MSRB and SEC again expanded the scope of Rule G-37 to prohibit brokers, dealers and municipal finance professionals from soliciting or directing others to make contributions to an official of an issuer or to a state or local political party where the dealer is seeking to engage in municipal securities business. The prohibition applies to any political committee created or controlled by the dealer or municipal finance professional as well.

New York Banks and the SEC's pay-to-play Rules

In 2009 and 2011, the Securities and Exchange Commission enacted a set of regulations to address a series of pay-to-play corruption scandals with money managers and officials in charge of state investment funds. The SEC's rule prohibits investment advisors from providing advisory services for compensation for two years if the advisor had made a contribution to an elected official in a position of influence. Furthermore, the new regulations limit the ability of advisory firms and executives to fundraise for any campaign via "bundling," and prohibit paying third-party placement agents from soliciting a government client on behalf of the investment adviser. Investment advisers are still allowed to make contributions up to $350 in elections they can vote in and $150 in elections they cannot vote in.[21]

These regulations arose after the corruption scandal with New York Comptroller General Alan Hevesi and Los Angeles venture capitalist Elliott Broidy. New York Attorney General Andrew Cuomo (now Governor) led the charge against Broidy and Hevesi. "Alan Hevesi presided over a culture of corruption and violated his oath as a public servant," Cuomo said. "He was solely charged with protecting our pension fund, but we exploited it for personal benefit instead."[22] Broidy's firm, Markstone Capital Partners, had received a $250 million investment from the New York public pension fund. "Broidy lavished Hevesi, other state officials and their families with gifts, including $75,000 in travel expenses, $380,000 in sham consulting fees and $500,000 in political campaign contributions that were directed by Hevesi."[23]

There have still been several cases of pay-to-play corruption involving investment managers and public officials. In May 2012, the SEC charged for Detroit Mayor Kwame Kilpatrick and the managers of MayfieldGentry Realty Advisors ("MGRA") with a "secret exchange of lavish gifts to peddle influence over Detroit's public pension funds' investment process."[24] The gifts

[19] Id.
[20] Braun, Martin, Michael McDonald and Ryan McKaig, "A Political Family Affair?" *The Bond Buyer* (Oct. 1, 2002), 1.
[21] Magaziner, Allix, "Federal pay-to-play Rule is Here to Stay," *Pay to Play Law Blog* (July 7, 2010).
[22] Lifsher, Marc, "Ex-N.Y. Pension Fund Trustee Pleads Guilty," *Los Angeles Times* (Oct. 8, 2010).
[23] Id.
[24] Racine, Karl, "The SEC Remains Focused on Pension Funds and pay-to-play," *Mondaq* (May 17, 2012).

included a $3,000 trip to North Carolina, a $62,000 trip to Las Vegas, a private jet flight to Tallahassee, Florida, and a weekend trip to Bermuda for Kilpatrick. MGRA had previously supported an opponent of Kilpatrick, but was "only too eager" to provide support for Kilpatrick in exchange for access to the Detroit public pension fund.[25]

Connecticut

Between 1999 and 2005, a number of elected officials and their associates in Connecticut resigned and pleaded guilty to corruption charges. This includes State Treasurer Paul Silvester, who invested over $500 million in state pension funds with financial institutions that "kicked back" money, via associates and friends, to his campaign committee; and State Senator Ernest Newton II, who received a small $5,000 bribe from a non-profit organization that sought a $100,000 state grant.[26]

Most notoriously, Governor John Rowland resigned and pleaded guilty in June 2004, "acknowledg[ing] that he conspired with other public officials and state contractors to award and/or facilitate the award of state contracts" in return for free vacation stays, complimentary construction on his home, and private flights to Las Vegas.[27] The controversy surrounded William Tomasso, a construction contractor with close ties to Governor Rowland who had donated $76,000 to his re-election campaigns from 1998-2002.[28] The Tomasso Group, his contracting business, received $131 million in state contracts for three projects. Two of the sites—worth a combined total of $94 million—were awarded in a "no-bid" contest by the Public Works Commissioner, who cited his legal power to bypass procurement procedure in an emergency. While the Commissioner has "defended his choices for these projects as fair and free of political influence," a 2003 *New York Times* article attributed "pressure from the governor's office" for the commissioner to complete the facilities quickly, using the emergency power clause.[29] William Tomasso eventually pleaded guilty to federal charges in the corruption scandal.[30]

In response to the corruption cases in the state—78 percent of Connecticut voters said they believed campaign finance laws encouraged candidates to grant special favors and preferential treatment to their contributors at the peak of the scandals in 2005—the legislature enacted pay-to-play limits.[31] Section 9-612(g) through (i) of the Connecticut General Statute covers both no-bid and competitive-bid contracts, and includes any contractor or prospective contractor, a member of that company's Board of Directors, an individual with a 5% ownership interest, or an individual with managerial or discretionary responsibilities with the state contract. The State Elections Enforcement Commission oversees and enforces these prohibitions.[32] When these laws

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[25] Id.
[26] *Green Party of Connecticut v. Garfield*, 537 F. Supp.2d 359, 22-3
[27] *Green Party of Connecticut v. Garfield*, 21
[28] Von Zeilbauer, Paul, "Federal Inquiry into Influence Peddling Under Rowland Administration Expanding," *The New York Times* (March 17, 2003).
[29] *Id.*
[30] *Green Party of Connecticut v. Garfield*, 21
[31] *Green Party of Connecticut v. Garfield*, 25
[32] Sandstrom, Karl and Michael Liburdi, "Overview of State Pay-to-Play Statutes," Perkins Coie LLP, 2-3

passed, Governor M. Jodi Rell said, "With my fellow Constitutional Officers, and our partners in the Legislature, we have changed the ethical landscape of the state."[33]

In 2010, the Second Circuit upheld the recently enacted ban on campaign contributions by Connecticut government contractors in *Green Party of Connecticut v. Garfield*. *Green Party* upheld the ban on political contributions by state contractors because they "were featured actors in the recent 'pay to play' public corruption scandals."[34]

A 2012 study by the Center for Public Integrity ranked Connecticut second to New Jersey in accountability and transparency. "Connecticut has undergone significant reforms in recent years, and that, as a result, state government has never been more open to public view and inspection."[35]

New Jersey

In response to the Federal Clean Air Act Amendments of 1990, the state of New Jersey began a procurement process to design and operate an Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program. The state awarded a seven-year private contract worth $392 million to Parsons Infrastructure to develop the program. But the Parsons system broke down within the first few weeks of operation, and the Governor ordered an independent inquiry into the procurement process.[36]

In its March 2002 report, the state Commission of Investigation blamed a variety of bureaucratic issues in awarding the contract to Parsons. "Little was done to ensure that the firm possessed sufficient experience to do the job or that there would not be undue reliance on subcontractors operating beyond the scope of the state's control."[37] The investigation attributed this—and the fact that Parsons was the lone bidder for such a lucrative contract—to their undue influence in the state government. This provided the company an inside track, "inconsistent with the public's rightful assumption that the procurement process is and should be a 'level playing field' for all potential bidders."[38]

Between 1997 and 2000, when Parsons submitted their non-competitive bid for the (I/M) program, Parsons-related entities gave $507,950 to political candidates and state committees, and extensively lobbied state leaders. After State Senate President Donald T. DiFrancesco came out against awarding the contract, a Parsons-sponsored lobbyist called DiFrancesco's office. The lobbyist "pointed out" that Tony Sorter, a large contributor to DiFrancesco's campaigns, was one of the main subcontractors for the project.[39] One day after Parsons had submitted the bid to the state, the program manager "was instructed by Parsons Infrastructure President Frank DeMartino

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[33] Nathan, Fred, "Restoring Trust," *Think New Mexico*, 21
[34] Green Party of Connecticut v. Garfield, 74-5
[35] Stern, Paul, "Connecticut: The Story Behind the Score," *State Integrity* Investigation (2012).
[36] Schiller, Francis E., "N.J. Enhanced Motor Vehicle Inspection Contract," Commission of Investigation (March 2002), 1
[37] Id., at 3
[38] Id., at 4
[39] Id., at 51

… to deliver a [$1,000 check] from Parson's California headquarters," to Donald DiFrancesco.[40] Significantly, the investigation concluded that Parsons remained within the boundaries of the law in 1998, and a lobbyist "defended the fundraising efforts as a valid component of the political process."[41] With a lackluster procurement process and no pay-to-play laws, the I/M program with Parsons and the individual subcontractors eventually cost the state of New Jersey $590 million for an ineffective program, nearly $200 million more than originally expected.[42]

In reaction to the Parsons scandal, Gov. James McGreevey passed an Executive Order in 2004 that was later codified into law.[43] The main purpose of the law was to "prevent even the appearance of campaign contributions influencing the granting of business contracts."[44] The general pay-to-play laws in New Jersey apply to: (1) contracts with a transaction value exceeding $17,500; and (2) political contributions or solicitations exceeding $300 per election to certain candidate committees or other political committees.[45] New Jersey pay-to-play laws have frequently been called the toughest and most effective in the nation.[46]

California

California has a mix of local and recently-strengthened state-level pay-to-play laws, which resulted in reducing the number of pay-to-play scandals in the state. In 2004, Attorney General Bill Lockeyer conducted an investigation into Governor Gray Davis' no-bid software contract with Oracle Corp. According to state senate investigations, an Oracle lobbyist handed a $25,000 check to one of Davis' policy directors, days after the state signed a $95 million contract with Oracle to upgrade state government computer systems. Davis eventually returned the check to Oracle and rescinded the contract with the company. His chief policy director, Kari Dohn, was fired and charged with falsifying evidence. However, Senate President Pro-Tem John Burton (D-San Francisco) called this "a high profile deal" because Lockeyer "had to come up with somebody" and that others involved in the scandal had escaped being charged.[47]

The other major case of pay-to-play politics in California emerged in 2010, as Attorney General Edmund G. Brown sued two California Public Employees' Retirement System ("CalPERS") board members. The suit claimed that "ARVCO (a company acting without a securities broker-dealer license) obtained more than $47 million in undisclosed and unlawful commissions for selling approximately $4.8 billion worth of securities from [CalPERS]" as a placement agency between 2005 and 2009.[48] The company was formed by Alfred Villalobos, a former board member, who allegedly exerted undue influence over a CalPERS board member and CalPERS' Chief Investment Officer. The case also accused CalPERS board member Federico Buenrostro of

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[40] Id., at 63
[41] Id., at 65
[42] Id., at 1
[43] Political Activity, Lobbying Laws & Gift Rules Guide, 3d § 19:14
[44] Political Activity, Lobbying Laws & Gift Rules Guide, 3d § 19:14
[45] Political Activity, Lobbying Laws & Gift Rules Guide, 3d § 19:14 ; See N.J. Stat. Ann. §§ 19:44A-20.3, 19:44A-20.4, 19:44A-20.5, 19:44A-20.14, 19:44A-20.15; N.J. Exec. Order 117 (2008).
[46] O'Dea, Colleen, "New Jersey: The Story Behind the Score," *State Integrity Project* (2011).
[47] Ingram, Carl "Former Davis Aid Faces Charges in Oracle Probe," *Los Angeles Times* (March 4, 2004).
[48] *California v. Villalobos*, 453 B.R. 404 (U.S. Dist. Court D, 2011)

playing a key role in the scheme and cited the lavish gifts Villalobos gave Buenrostro and other CalPERS board members.[49]

This case led to a string of bills, including Assembly Bill 1584 (AB 1584), Assembly Bill 1743 (AB 1743) and Senate Bill 398 (SB 398), passed in 2009, 2010, and 2011, respectively. These laws redefined securities and asset managers for CalPERS and the California State Teachers Retirement System ("CalSTRS"), requiring them to register as lobbyists. This subjects the asset managers to the state's campaign contribution ban for lobbyists, and requires quarterly lobbyist financial reports.[50] Therefore, CalPERS and CalSTRS board members are now subject to pay-to-play laws like other lobbyists throughout California. The California Fair Practices Commission has implemented these laws by developing "a user-friendly format for agencies to assign disclosure requirements."[51]

Hawaii

After a string of pay-to-play corruption scandals emerged in the early 2000s, Hawaii adopted fairly strong pay-to-play laws. Between 2002 and 2005, Hawaii Campaign Spending Commission Director Robert Watada fined "nearly 100 companies … for making false name contributions and excessive contributions to Honolulu Mayor Jeremy Harris and former Gov. Benjamin Cayetano."[52]

Three engineering firms in Honolulu and their relationship with Harris highlighted the pay-to-play culture in Hawaii. One egregious example came from Michael Matsumoto, an engineering executive at SSFM International, Inc. Matsumoto, via his family and other company employees, contributed over $400,000 to Harris' campaigns between 1998 and 2002. SSFM International received over $7 million in project contracts from the city during this period.[53]

Mayor Harris even returned favors and contracts to his smallest contributors. In 2003, Honolulu lawyer Edward Chun was charged with two misdemeanors for "orchestrating illegal campaign contributions to Mayor Jeremy Harris."[54] Chun had advised Food Grocery, a grocery chain store, to funnel a meager $9,000, via the names of three of their employees, to Mayor Harris' campaign. (The legal contribution limit for Honolulu Mayoral races is $4,000.) The deputy prosecutor in the case said "someone from the Harris campaign had solicited Mr. Chun," and Chun felt $9,000 was enough for Food Grocery to buy the government contract.[55]

Hawaii adopted restrictions on government contractors in 2005 in the aftermath of these pay-to-play scandals. Section 11-205.5 of the Hawaii Revised Statutes prohibits any person entering into a contract with the state or its subdivisions or any department or agency of the state from

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[49] Lifsher, Marc "SEC Suit Says Two Former CalPERS Officials Defrauded Equity Firm," *Los Angeles Times* (April 24, 2012).
[50] Magaziner, Allix, "Public Pensions are Not for Sale in California," *Pay-to-play Law Blog* (Oct. 6, 2010).
[51] California Fair Political Practices Commission, "Adopting a Conflict-of-Interest Code, found here
[52] Zimmerman, Maria, "Bob Watada Honored for Herculean Effort to Clean Up Corruption in Government," *Hawaii Reporter* (Nov. 4, 2005).
[53] Dunford, Bruce, "Scandal Shakes Up Hawaii," *Associated Press* (Feb. 12, 2004).
[54] Brannon, John, "Lawyer Charged in Donations Made to Harris," *Honolulu Advertiser* (May 21, 2003).
[55] Id.

directly or indirectly making or promising to make any contribution.[56] Hawaii's restriction applies to both no-bid and competitive-bid contracts and is enforced by the Campaign Spending Commission.

Illinois

Illinois adopted state pay-to-play laws after the scandal featuring Governor Rod Blagojevich. Despite campaigning as a reformer ready to end Illinois' pay-to-play reputation, Blagojevich epitomized pay-to-play corruption. In a 2008 report, the *Chicago Tribune* found that 235 individuals made exactly $25,000 donations to the Blagojevich campaign, noting that $25,000 is unusually large and the campaign received an unprecedented number of these large donations. The *Tribune* then discovered that "three of every four [$25,000 donations] came from companies or interest groups who got something—from lucrative state contracts to coveted appointments to favorable policy and regulatory actions."[57]For example, John Clark, a principal with a Chicago Architectural firm that received a contract to redesign the Illinois Tollway, said "the project started to go more smoothly" once he made a $25,000 donation at a Blagojevich fundraiser.[58]

In 2009, the U.S. District Attorney's Office charged Blagojevich on 18 counts of corruption and extortion. This included directing the business of refinancing state Pension Obligation Bonds to a company whose lobbyist would provide funding to someone in Blagojevich's inner-circle; controlling which companies managed the investments in the state's Teacher Retirement System (TRS) based on contributions; exploiting the Children's Memorial Hospital by promising additional state funding if the hospital's Chief Executive Officer provided campaign contributions; and attempting to obtain personal financial benefits in return for his appointment as a United States Senator in President Barack Obama's vacant seat.[59] Blagojevich was also accused of telling a Democratic National Fundraiser that "it was easier for governors to solicit campaign contributions because of their ability to award contracts and give legal work, consulting work, and investment banking work to campaign contributors,"[60] highlighting his willingness to exploit the pay-to-play system.

In response to the Blagojevich scandal, the state of Illinois adopted a set of laws in 2009 to limit pay-to-play. The laws created a Procurement Policy Board to oversee all state leases. Any contractor receiving contracts valued at more than $50,000 is banned from making campaign contributions to state candidates and officials responsible for awarding the contracts and their committees, and all contract bidders must register with the state board of elections.[61] Ed Bedore, a member of the Procurement Policy Board, said of the corruption scandals that "he has seen nothing along [the lines of Blagojevich or former Governor Jim Edgar] since Governor Pat Quinn took office."[62]

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[56] Sandstrom and Liburdi, "Overview of State pay-to-play Statutes," Perkins Cole Legal Counsel, 4
[57] Meitrodt, Jeffrey, Ray Long, and John Chase, "The Governor's $25,000 Club: Big Campaign Donors to Blagojevich Benefit From State," *Chicago Tribune* (April 27, 2008).
[58] Id.
[59] *U.S. v Blagojevich*, 612 F.3d 558 (U.S Court of Appeals, 2010), 17-37
[60] Id. at 20
[61] Illinois Public Act 095-0971, HB 0824
[62] Vinicky, Amanda, "Illinois: The Story Behind the Score," *State Integrity Investigation* (2012).

Kentucky

In light of a series of corruption scandals, Kentucky enacted several laws in an attempt to limit pay-to-play. KRS 121.330(1) through (4) prohibits an elected official from awarding a no-bid contract to any entity whose officers or employees, or the spouses of officers or employees, contributed more than $5,000 to the elected official's campaign.[63]The $5,000 limit for all members of the contracting entity is the highest nationwide, and has a limited impact as only 38 percent of Kentucky's procurements were awarded on single bids.[64]

Kentucky has experienced several major corruption charges over the last 20 years. In the early 1990's, the "BOPTROT" investigation revealed that state legislators on the Business Organizations and Professions Committee, which oversees horseracing, had sold their votes on official legislative actions to the horse racing industry, "some for as little as $100."[65] The wave of ethics regulations that followed enabled the indictment of Leonard Lawson, a Kentucky road-construction magnate, who was eventually charged with bribery. Lawson had received over $418 million in state highway contracts in 2006 and 2007, but had bribed Transportation Secretary Bill Nighbert and frequently was able to exclude any competitive bids by using information from Nighbert.[66]

More recently, the Kentucky Retirement System (KRS) has been involved in an ongoing investigation from the Securities and Exchange Commission. KRS handles investments of over $12 billion, but an internal audit revealed that the Chief Investment Officer paid placement agents $13 million over six years favoring one placement agent in particular, indicating a "perceived appearance of preferential treatment" for placement agent Glen Sergeon. (Sergeon denied being connected to a KRS commissioner.) An audit eventually led the Retirement Board to fire Executive Director Robert Burnside and Chairman Randy Overstreet in April of 2011.[67] This was the first case for the SEC under the recently enacted pay-to-play rule regulating investment advisors.

Louisiana

After a procurement scandal erupted with the popular four-term Governor Edwin Edwards, Louisiana adopted a law stating "no entity that holds a casino operating contract … shall be eligible to make campaign contributions to any person seeking election or reelection to a public office."[68] This law passed in reaction to the Edwards' bribery scandal, in which Governor Edwards accepted bribes from applicants for riverboat casino licenses, including $400,000 from San Francisco 49ers owner Eddie DeBartolo.[69] (Edwards had campaigned in 1992 on legalizing and expanding gambling in the state.) The law was upheld in the federal court case, *Casino Association of Louisiana Inc. v. Louisiana*, and the Supreme Court denied review of the case.

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[63] KY. REV. STAT. 121.330(1)-(4)
[64] Cheves, John, "Cabinet Learns Lessons From Trial," *The Courier-Journal* (Feb. 21, 2010).
[65] Carfagno, Jacalyn, "Kentucky: The Story Behind the Score," *State Integrity Investigation* (2012).
[66] Loftus, Tom "Indicted Contractor Battled His Way to the Top," *The Courier-Journal* (Sep. 7, 2008).
[67] Giardina, Michael "Kentucky Retirement Board Kicks Out Executive Director," *Investment Management Weekly* (April 11, 2011).
[68] LSA-R.S. 27: 261
[69] Dietz, David, "DeBartolo Guilty of Felony," *San Francisco Chronicle* (Oct. 7, 1998).

Louisiana defines the crime of bribery of a candidate as anyone making or promising to make a campaign contribution in exchange for a promise from the officeholder to award a government contract to the contributor.[70]

New Mexico

In response to a series of procurement scandals, New Mexico adopted pay-to-play laws in 2006. However, allegations of procurement scandals have continued to embroil the state's political leadership, including with former presidential candidate and New Mexico Governor Bill Richardson. New Mexican advocacy groups continue to push for stronger laws.

The Bernalillo County Metropolitan Courthouse conspiracy involved long-time New Mexico Senate President Pro-Tem Manny Aragon. Aragon had "suggested that Design Collaborative Southwest ("DCSW") be hired to complete the architectural design of the courthouse."[71] Along with Marc Schiff, a DCSW partner, and former Albuquerque Mayor Kenneth Schultz, Aragon encouraged the submission of over-inflated invoices for the company's benefit. These invoices cost the state of New Mexico an additional $4,374,286.[72] In the first over-inflated invoice, Aragon personally skimmed $40,000 off of the $918,015 invoiced, after DCSW inflated their quote for the architectural design of the courthouse. In the second over-inflated invoice, Aragon received $609,272 when the courthouse purchased an over-priced audio-visual installment. Evidence further found that Raul Parra, a partner in an engineering firm that designed the audio-visual system, convinced his own firm and DCSW that "it would be beneficial to pay Aragon thousands of dollars to guarantee work on public construction contracts."[73]

The second pay-to-play case involved former State Treasurer Robert Vigil, and payment to another former State Treasurer, Michael Montoya. Montoya had previously hired Vigil as a Deputy State Treasurer and had contributed significant sums to Vigil's campaign to succeed him. However, as Vigil's first term concluded, Montoya was "threatening to run against [Vigil] in the next election," and Vigil "felt that he could prevent Montoya from running for State Treasurer by securing [Montoya's wife, Samantha] Sais a job…"[74] Simultaneously, George Everage, a New Mexico State Transportation Office (NMSTO) employee proposed a securities-lending program for the office to earn additional income on their securities inventory. "Everage recommended that the NMSTO create a position—securities-lending oversight manager ("SLOM") … [and] if and when the securities-lending program was implemented, Everage [wanted] the opportunity to bid on the contract for the SLOM position."[75] Vigil then pressured Everage to include a subcontract for "a friend whose wife needed a job," and to offer her $16,000. But in their initial meeting, Sais demanded that Everage provide $55,000 in compensation. "Based on this meeting, Everage concluded that Sais did not have any knowledge regarding securities lending, and decided that he did not wish to rehire her."[76] As Everage and Sais attempted to reach a compromise, "It was Everage's understanding … that Vigil was unhappy that Everage and Sais could not reach some

[70] LRS § 18:1469(A)
[71] *U.S. v. Martinez*, 610 F.3d 1216 (U.S. Court of Appeals, 2010), 1220
[72] Id., at 1220
[73] Id., at 1221
[74] *U.S. v. Vigil*, 506 F.Supp.2d 544 (U.S. District Court D, 2008), 548
[75] Id., at 549
[76] Id., at 550

arrangement, and Everage felt that Vigil was threatening to cancel his contract with the NMSTO."[77] Everage concluded that it seemed unlikely he would receive the contract, so he withdrew.

Vigil then placed a second request for proposal for the contract, and the same issue arose with another individual who bid on the new contracts. For his attempt to direct a government contract to an individual willing to hire the wife of a potential political opponent, Vigil resigned and spent 29 months in prison.[78] He had also been on trial for 23 other counts, but was eventually acquitted due to lack of evidence.[79] Significantly, a witness in this case stated: "My understanding is [getting bribes from people who wanted business with the state] is how business is done in New Mexico."[80]

Former New Mexico Governor Bill Richardson was the subject of multiple pay-to-play allegations, and while all of the charges have been dropped, it caused him to withdraw from his nomination as Secretary of Commerce in President Barack Obama's cabinet in January 2009.[81] The first incident involved CDR Financial Products, Inc. based out of Beverly Hills, California. The president of the company, David Rubin, donated $100,000 to Richardson-controlled PACs, and additional $10,000 to his 2005 re-election campaign, and had received two contracts from the state of New Mexico valued at $1.4 million. "Specifically, [an individual with knowledge of the grand jury proceedings] said, the jurors were hearing testimony about whether someone in the governor's office had pushed the New Mexico Finance Authority to give business to the company."[82] Richardson was cleared on August 27, 2009.

Another incident, also in 2009, was a part of the larger SEC and Justice Department investigation into pay-to-play practices with Wall Street money managers and their placement agents in public pension systems. On October 22, Gary Bland, New Mexico's Investment Chief resigned as allegations arose that Richardson's former chief of staff "instructed Bland to make investments in exchange for political contributions."[83] The case alleged that New Mexico lost $90 million while investing with firms whose employees contributed at least $15,100 to Richardson's presidential campaign.[84] While the prosecution was unsuccessful at charging Bland, $16 million—representing nearly "half of the fees paid to middlemen for New Mexico investments"—went to Marc Correra, the son of a Richardson political supporter and a financial securities placement agent.

Lastly, Richardson's Transportation Commission Chairman Johnny Cope was implicated in a procurement scandal involving a bid for a federal stimulus project. In 2009, multiple companies

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[77] Id., at 551
[78] Cole, Thomas "Ex-Con N.M. Treasurer Gives $45K to Wife's Campaign," *Albuquerque Journal* (April 14, 2012).
[79] Sandlin, Scott and Mike Gallagher, "Vigil Guilty on 1 Count; Former N.M. Treasurer Acquitted on 23 Other Charges," *Albuquerque Journal* (Oct. 1, 2006).
[80] Nathan, Fred, "Restoring Trust," *Think New Mexico*, 7
[81] Stolberg, Sheryl Gay, "Richardson Won't Pursue Cabinet Post," *The New York Times* (Jan. 4, 2009).
[82] McKinley, James, "Political Donors Contracts Under Inquiry in New Mexico," *The New York Times* (Dec. 18, 2008).
[83] Selway, William and Martin Z. Braun, "New Mexico's Investment Chief Resigns Amid Probe," *Bloomberg* (Oct. 22, 2009).
[84] Id.

submitted bids on a contract to expand Interstate 10 near Las Cruces, New Mexico, with the lowest bid coming from Fisher Sand & Gravel – New Mexico, Inc. But after agreeing to award the contract to Fisher, "DOT officials held off and began an inquiry after FNF [Construction New Mexico] attorneys and officials privately contacted them to discredit Fisher."[85] It became clear that FNF Construction had obtained confidential state legal documents, via faxes and meetings between Cope and the vice president of FNF, Paul Wood. Both Wood and Cope contributed extensively to Richardson's presidential campaign and fundraised for Richardson's PAC, tying the Governor to yet another pay-to-play scheme.[86] "The new Fisher lawsuit accuses Cope of 'willfully and intentionally' interfering with the awarding of the construction contract to Fisher in the weeks after bids were opened."[87] A District Judge sided with Fisher stating that the Department of Transportation's position that private discussions with FNF were permissible was "contrary to the policy of integrity and transparency in the bidding process."[88] Eventually, the Federal Highway Administration required the New Mexico Department of Transportation to seek new bids, and the contract was given to a different party.

New Mexico has on the books a set of laws regarding procurement and campaign finance, generally considered among the weaker pay-to-play restrictions among the states. N.M. Stat § 13-1-191.1(B) requires disclosure for all contributions exceeding $250 over a two-year period and "prohibits a prospective contractor, family member, or representative from giving a campaign contribution or any other thing of value to a public official during the negotiation period for a sole source or small purchase contract."[89] New Mexico would be better able to prosecute some of their scandals with stronger procurement laws, as violations can result only in cancellation or termination of a contract.[90] While the state has come a long way from the days of "this is how business is done," stronger procurement laws could further reduce a pay-to-play culture, increase contracting fairness, and reduce corruption or the appearance of corruption.[91]

Ohio

The state of Ohio has a long history with procurement and ethics scandals. In the wake of the Watergate corruption case, the state legislature created the Ohio Ethics Commission and an Inspector General's Office to monitor and investigate allegations of corruption in the legislative and executive branches.

These ethics offices remain today. However, the inspectors and members of the Ethics Commission are all appointed by the officials they oversee, limiting the effectiveness of Ohio's anti-corruption laws. This has led to a series of procurement scandals and a culture of pay-to-play in Ohio.

The P.I.E. Mutual Insurance scandal in the early 1990's had both a devastating impact on the state's doctors and the ethical code of the Department of Insurance. The Chief Executive of

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[85] Heild, Colleen, "Low Bidder Sues Over Lost Contract," *Albuquerque Journal* (Jan. 15, 2012).
[86] Heild, Colleen "NMDOT Documents Leaked to Bidder," *Albuquerque Journal* (July 10, 2011).
[87] Heild, Colleen, "Low Bidder Sues Over Lost Contract," *Albuquerque* Journal (Jan. 15, 2012).
[88] Heild, Colleen "NMDOT Documents Leaked to Bidder," *Albuquerque Journal* (July 10, 2011).
[89] N.M. Stat § 13-1-191.1(E)
[90] N.M. Stat § 13-1-181, 13-1-182
[91] Nathan, Fred, "Restoring Trust," *Think New Mexico*, 7

P.I.E., which provided insurance for one-third of Ohio's 34,000 licensed physicians, had "failed to notify the Department of Insurance and P.I.E's board in writing that company finances were deteriorating and allegedly altered financial statements to make the insurer appear solvent when it was losing millions."[92] When the Department of Insurance took control of the company, they were forced to liquidate it, as liabilities exceeded assets by $275 million.

P.I.E's chief executive coordinated the company's fraud through the Deputy Director of the Department of Insurance, David J. Randall. According to news reports, "Randall admitted to vouching for the financial stability of P.I.E. in June 1996, 18 months before the state took it over… Randall also said he accepted air fare, lodging, Cleveland Indians tickets and a golf outing from P.I.E. or its former president, Larry E. Rogers."[93] P.I.E. President Rogers also made $1.5 million in illegal campaign contributions to top Ohio Republicans, and his company's collapse left many in-state doctors without malpractice insurance.[94]

In 2004, the Ohio Ethics Commission charged Gilbane Building Co. of Rhode Island and the Executive Director of the Ohio School Facilities Commission Randall A. Fischer with state ethics violations in a classic pay-to-play scandal. Fischer had accepted and mere $1,289 from six companies seeking multimillion-dollar no-bid contracts from the school facilities commission, including $862 from Thomas Gilbane.[95] Apparently in return, Gilbane's company received $11 million worth of contracts, all approved by Fischer.[96]

In 2005, pay-to-play reached the top levels of government as Ohio Governor Bob Taft was convicted and fined $4,000 for accepting gifts over $75 without disclosing them. These gifts included over $6,000 worth of golf outings, meals, and tickets to see the Columbus Blue Jackets, including some from Thomas Noe, who invested Bureau of Workers' Compensation (BWC) money in rare coins and was appointed as a regent of Ohio State University.[97]

This was connected to a larger scandal, commonly known as *Coingate*. Beginning in 1996, the BWC invested $500 million with politically-connected investment firms. More than half of the firms contributed to the Republican party and statewide candidates, including $61,875 for Governor Taft.[98] In a 2005 *Toledo Blade* article, State Senator Marc Blann said, "It's one thing to have pay-to-play. I think they're at a point that they don't even know it's wrong anymore."[99] Noe and his associates had contributed $6,780 to GOP candidates before receiving $50 million to invest from BWC, and in the years after receiving the contract, Noe contributed $65,250 to statewide candidates. However, Noe's investment in rare coins went afoul and $13 million was

[92] Sheban, Jeffery, "Rogers Indicted On 3 Charges," *Columbus (OH) Dispatch* (Dec. 8, 1998).
[93] Craig, Jon, "Former State Officials Receives 75 Days in Jail," *Akron Beacon Journal* (Sep. 22, 1998).
[94] Craig, Jon, "Ohio: The Story Behind the Score," *State Integrity Investigation* (2012).
[95] Bathija, Sandhya, "Ex-Schools Agency Director Fined," *Dayton Daily News* (July 10, 2003).
[96] Niquette, Mark "Construction Company Faces Ethics Charge," *Columbus Dispatch* (June 11, 2004).
[97] "Ohio Gov. Charged with Criminal Misdemeanors," *Reuters* (Aug. 17, 2005).
[98] Drew, James and Mike Wilkinson, "Fund Managers Ratcheted Up Political Giving," *Toledo Blade* (April 19, 2005).
[99] Drew, James and Mike Wilkinson, "Fund Managers Ratcheted Up Political Giving," *Toledo Blade* (April 19, 2005).

reported missing, due in large part to what later become recognized as his Ponzi scheme investment.[100]

As a result of Coingate, Democrats in the Ohio legislature introduced legislation to "knot the loopholes in the 20-year-old law designed to restrict campaign donations from Ohio's contractors."[101] One of the key provisions of the new law was to require special disclosure requirements for government contractors so that the State Ethics Commission could monitor whether contractors were complying with the contributions restrictions. However, the strengthening legislation was overturned by the state's Supreme Court because of a procedural error. "Instead of copying the final engrossed bill, Am.Sub.H.B. No. 694, [the personnel of the House clerk's office] prepared the enrolled version based on Sub. H.B. No. 694 (as opposed to Am.Sub.H.B. No. 694), and added signature pages for the speaker of the House and the president of the Senate, who signed them."[102] Since the State Senate had only passed Am.Sub.H.B. No. 694 but the speaker signed Sub.H.B. No. 694, the law was declared unconstitutional. This error caused the state's law to revert to the 1974 loophole filled legislation.

With the return to the 1974 pay-to-play laws, there continue to be a number of pay-to-play scandals in Ohio politics. In 2009, a school board member in the Parma School District outside of Cleveland resigned after approving $25 million in contracts to companies that contributed to the board member's political war chest.[103] The board member, J. Kevin Kelley, then testified that he accepted a $10,000 bribe from State Sen. Tom Patton, who was a consultant for a company that received a $489,000 contract from the school board.[104] While Patton denied Kelley's claim, the *Cleveland Plain Dealer* reported in March 2012 that the investigation is still ongoing.[105]

In February 2012, a *Dayton Daily News* article exposed another loophole in the Ohio law, and yet another example of pay-to-play politics in Ohio. Ohio Attorney General and former U.S. Senator Mike DeWine had loaned his campaign $2 million in an attempt to unseat Democrat Richard Cordray in 2010. In the next two years, DeWine raised $1.47 million to pay off the debt. Specifically, the article found 10 firms that contributed a combined $194,830 to DeWine's campaign fund. Those firms received $9.6 million in legal fees for 225 assignments from the Attorney General's office. Flanagan, Hoffman, Lieberman & Swaim contributed $4,950 to the DeWine campaign, and two of the firm's lawyers, Candi Rambo and Brent Rambo, chipped in an additional $1,750. The firm performs debt collection and other government contract work for the attorney general's office. [106]

South Carolina

South Carolina's Ethics and Government Reform Act emerged in 1991—after 17 state lawmakers were caught in an FBI sting—and included extensive procurement laws banning pay-

[100] Drew, James and Steve Eder, "Petro: Noe Stole Millions," *Toledo Blade* (July 22, 2005).
[101] Boak, Joshua, "Dmeocrats Seek to Limit Contractors' Campaign Donations," *Toledo Blade* (Sep. 28, 2005).
[102] *United Auto Workers, Local Chapter 1112 v. Brunner*, 182 Ohio App.3d 1 (Court of Appeals of Ohio, 2009), 332
[103] Wagner, Joseph, "Kelley Quits Parma School Board," *Cleveland Plain Dealer* (March 21, 2009).
[104] Rachel Dissell and John Caniglia, "Kelley Says Legislator Paid Bribe; Sen. Patton Denies Testimony About Contract with Parma Schools," *Cleveland Plain Dealer* (Feb. 3, 2012).
[105] Dissell, Rachel, "Will Loose Ends of Investigation Bring Charges?" *Cleveland Plain Dealer* (March 11, 2012).
[106] Bischoff, Laura, "Donations Helping DeWine Pay Down Campaign Loan," *Dayton Daily News* (Feb. 12, 2012).

to-play practices. While the law, S.C. Code § 8-13-1342 only includes no-bid contracts, it bans those who receive contracts from contributing to public officials, prohibits public officials from soliciting campaign contributions from those with a state contract, and includes severe punishment with possible jail time.[107]

The state's pay-to-play law is not particularly robust in comparison to other states, which may be part of the reason why there have been relatively few pay-to-play enforcement cases.

In 2008, for example, a newly elected Clemson University trustee gave $5,100 in campaign donations to lawmakers as the South Carolina General Assembly voted him in. John "Nicky" McCarter Jr. won his seat on an 87-73 vote, and while those who received donations said it had no impact on their vote, McCarter donated to nine lawmakers and the Lt. Governor. The checks were all received days after McCarter was approved as a candidate (but before his election) for the trusteeship. Several of the lawmakers tore up their checks, but in the end, six lawmakers who received donations from McCarter voted for him. However, "only donations from judicial and Public Service Commission candidates are restricted...[though] one lawmaker said he would sponsor a bill next year to prevent any candidate running for a seat chosen by the General Assembly from giving campaign contributions."[108]

The Attorney General's Office investigated State Treasurer Curtis Loftis in 2012, as to whether "companies were told they could improve their chances of handling state pension investment work if they paid a friend of Loftis."[109] However, the Attorney General concluded not to prosecute following the investigation.

State Sen. Jake Knotts attributes this low rate of pay-to-play prosecutions to the weak whistleblower law. In an article about South Carolina's whistleblower rules, Knotts said, "There's a lot of these contracts going on that are good ol' boy contracts," adding that those who knew about them would be more apt to blow the whistle if they were protected and got paid for it.[110]

Vermont

The intensely local nature of the Vermont legislature has helped facilitate a lack of major political scandals. State legislators are only part-time and are even required to list their home phone number on the legislature's website.[111] In 1997, Vermont approved pay-to-play laws stating that a firm, or a political committee of a firm, could not contribute to a candidate for the office of Treasurer.[112] Michael Chernick from the Vermont State Legislative Counsel's Office said: "Act 64 of the 1997 biennial … was just a philosophical desire of the state legislature…

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[107] S.C. Code § 8-13-1342 and § 8-13-1520(B)

[108] O'Connor, John, "Exclusive: Clemson Trustee Gave Thousands Before Election," *Columbia State* (May 30, 2008).

[109] Adcox, Seanna, "SC AG Finds Nothing to Prosecute Against Treasurer," *Associated Press* (April 6, 2012).

[110] Hutchins, Corey, "Senators Push to Protect State Employed Whistleblowers," *Columbia Free Times* (May 10, 2011).

[111] Margolis, Jon, "Vermont: The Story Behind the Score," *State Integrity Investigation* (2011).

[112] 32 Vt. Stat. Ann. § 109

seen as preventative but not in response to any scandal whatsoever."[113] Furthermore, the state government contracting law is supported by an independently run website, Vermont Transparency, which lists every vendor with the state of Vermont. The state gave out a meager $3 billion in procurements in Fiscal Year 2011.[114]

Virginia

While Virginia adopted a weak set of pay-to-play laws, they are further weakened by the unrestricted campaign contributions allowed in state politics. According to Va. Code Ann. § 2.2-4376, contributions to the Governor are illegal for any individual or company with a contract valued at over $5 million. However, this applies only to no-bid contracts.[115] Virginia has few prosecuted pay-to-play cases, and rather, newspapers have simply questioned whether pay-to-play *could* be happening.

The most major pay-to-play case did not involve campaign contributions, but rather bribery of officials known as the "Big Coon Dog" scandal. Contractors gave $545,000 in cash and gifts—including real estate, tickets to sporting events, hunting trips and coon dogs—to 16 public officials allegedly to win $8 million worth of clean-up and reconstruction contracts after a storm.[116]

After a 1997 American Bar Association task force was created to review political contributions by lawyers and law firms, Virginia's pay-to-play laws were more closely scrutinized. One study identified that "seven law firms doing municipal bond work for Virginia or its agencies have contributed more than $118,000 over the last two years to the campaigns of two candidates for governor."[117] Significantly, many Virginia-based law firms that received contracts with the state contributed to *both* candidates for governor in the 1998 race, including McGuire Woods Battle & Booth. The firm's PAC contributed $13,500 to Democratic nominee Donald Beyer and $17,300 to Republican nominee James Gilmore. The firm received $56.8 million in contracts from 1996-1997.

More recently, a controversy arose with Gov. Bob McDonnell and K12 Inc., an online school that gained footing in Virginia in 2009. The company had contributed $57,000 to lawmakers in 2009 and an additional $40,000 to Gov. McDonnell. The *Roanoke Times* noted: "Coincidentally, lobbyists for K12 represented the only private company invited by the governor's office to workgroup meetings in which lawmakers crafted bills for virtual schools, charter schools, and laboratory schools."[118] By allowing this private company to engage in the negotiations, McDonnell was accused by some to be giving undue influence to the company in the governing process.

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[113] Phone interview with Michael Chernick, Legislative Counsel, Vermont State Legislative Counsel's Office (June 27, 2012).
[114] "Vermont Transparency," Vendor Records. Found at Vermont Transparency
[115] Va. Code Ann. § 2.2-4376.1
[116] Bowman, Rex, "$1 million in bribery case given back to Buchanan," *Richmond Times-Dispatch* (March 7, 2006).
[117] Resnick, Anne"Virginia Gubernatorial Campaign Offers Forum for pay-to-play Debate," *Virginia Bond Buyer* (Sep. 2, 1997).
[118] "EDITORIAL: Money Does Indeed Speak: Students, Don't Forget to Add a Space for Campaign Donors to the How-a-bill-becomes-law Diagram," *The Roanoke Times* (March 14, 2010).

These scandals eventually prompted the legislature to adopt its pay-to-play law in 2010. While Virginia does indeed have a pay-to-play law on the books, the state's generally unregulated campaign finance environment has made it difficult to monitor and prosecute violations.

West Virginia

West Virginia has one of the oldest pay-to-play laws on the books, the result of a major procurement scandal that occurred in the 1960's. In 1967, the *Charleston Gazette* ran an investigative series about Gov. Wally Barron, charging that he had set up dummy corporations in Ohio and Florida. In order to receive a state contract, charged the investigative report, prospective vendors needed to pay those corporations for "help" in securing the contracts, rigging the process to reward those who paid to play.

In response to this incident, the state legislature created the Purchasing Practices and Procedures Commission, which brought 107 indictments against 32 individuals and 11 corporations on charges of bribery and conspiracy involving state purchasing practices in 1970. At first, Gov. Barron was not charged, but it was soon revealed that he had bribed a grand juror with a $25,000 check and was appropriately incarcerated.[119]

Today, that special legislative committee is known as the Commission on Special Investigations and has a branch that specifically targets and "ferrets out" pay-to-play schemes, keeping a unique level of focus on public procurement.

West Virginia has not been scandal free since 1970, but the cases that have arisen appear to be prosecuted effectively. In 1990, a second Governor was indicted for extortion. Gov. Arch A. Moore—who had previously been acquitted from the charge that he extorted $25,000 from the president of a holding company seeking a state charter for a new bank—pleaded guilty on a number of charges. This included his extortion of H. Paul Kitzer and Mabon Energy Corp. Moore assisted Kizer with receiving a refund of $2 million from the state's black lung fund, and then received 25 percent of that refund, amounting to $573,000.[120] (Moore also infamously "test drove" a car from a Charleston car dealership, returning the auto after his term ended. That dealership received a $2.9 million contract to sell cars to the state.)[121]

Another major case that the Commission on Special Investigations worked on was the 2009 Workforce West Virginia scandal in their grant-approval division. Mary Jane Bowling, a Workforce West Virginia manager, distributed a $100,000 grant to a company, Comar, which employed her son as the Chief Technical Officer. Bowling insisted that Comar receive the federal grant money, despite her conflict of interest.[122]

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[119] Newhouse, Eric, "West Virginia: The Story Behind the Score," *State Integrity Investigation* (2012).
[120] Wilson, Jill, "W.Va's Ex-Governor to Plead Guilty to Five Charges," *Associated Press* (April 13, 1990).
[121] Newhouse, Eric, "West Virginia: The Story Behind the Score," *State Integrity Investigation* (2012).
[122] Eyre, Eric, "Shakeup at Workforce: Resignations, Reassignments Part of Huge Overhaul," *Charleston Gazette* (Aug. 8, 2009).

West Virginia's pay-to-play law is fairly strict in that it works for both competitive and no-bid contracts, and individuals breaking the law are liable to prison time and large fines.[123]

Colorado's Proposition 54

The State of Colorado boasts of upholding a tradition of transparency and accountability in government. Despite the fact that "there have been no serious accusations of pay-to-play at the state level in recent years" and "even violations of the spirit of the rules are rare,"[124] voters passed Amendment 54 in 2008. The election was close, with 51 percent of voters supporting the Proposition.[125] Opponents of the ballot measure, including Denver Mayor (now Governor) John Hickenlooper, a prominent Democrat and reformer, opposed the measure for constraining labor unions.[126]

Proponents of the measure had sponsored it in response to accusations that Abel Tapia, the President Pro Tem of the Colorado State Senate, had been involved in a procurement scandal. Tapia, who also chaired the Appropriations Committee, had voted on an appropriations bill that erased the debt of the Colorado State Fair. Simultaneously, his engineering firm, Abel Engineering Professional, Inc., received $481,000 in contracts from the state fair.[127] The State Ethics Commission eventually cleared Tapia, on the grounds that Tapia himself was not involved in the contract negotiations and his firm had gone through a competitive bidding process.[128]

Amendment 54 made several changes to the state procurement process. First, it created a "complete prohibition of all contributions by contract holders and contributions made on behalf of contract holders and their immediate family, during the contract and for two years hereafter."[129] It then increased the penalty for breaching the law, by requiring any group to pay full restitution to the general treasury and cover costs for securing a new contract. Furthermore, any contract holder intentionally violating the law would be banned from seeking a new state contract for at least three years, and any officeholder intentionally violating the law would be removed from office and disqualified from seeking office in the future. Lastly, it redefined contractor and family by extending family to "aunt, niece, or nephew," as well as immediate family members.

In *Dallman v. Ritter*, the court imposed an injunction on the state constitutional amendment that was approved by voters using two major arguments. First, the court felt the amendment was overbroad and vague. The proposition "covered contracts that are not susceptible to competitive bidding,"[130] with its prohibition of campaign contributions for any contract not soliciting at least three bids. It "required us to assume, for instance, that a small contribution to a candidate for the general assembly automatically leads to a public perception that the donor will receive some quid

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[123] W. Va. Code § 3-8-12(d)
[124] Hamashige, Hope, "Colorado: The Story Behind the Score," *State Integrity Investigation* (2012).
[125] *Dallman v. Ritter*, 225 P. 3d 617-9
[126] Video: Hickenlooper. No on 47, 49, 54
[127] Gathright, Alan, "Senator Defends Contracts to his Firm," *Denver Rocky Mountain News* (April 12, 2008).
[128] Paulson, Steven, "Lawyers Say Colorado Lawmaker Apparently Followed Law," *Associated Press* (April 16, 2008).
[129] *Dallman v. Ritter*, 626
[130] Id., at 626

pro quo benefit from a city or special district with which the donor holds the sole source contract," challenging the application of the ban to any candidate for any elected office.[131] The court cited the harshness of the penalty, saying "a one-size-fits-all penalty may be appropriate when the sanction is a monetary fine, but here the severity of the penalty is disproportionate to Amendment 54's purpose."[132] And, the proposition's definition of immediate family members was so broad that "immediate family members are likely to refrain from contributing altogether, especially in light of the severe sanctions that the amendment provides."[133] Lastly, by using the phrase "on behalf of" to describe contributions from immediate family members, the court found the amendment unconstitutionally vague.[134]

The court also concluded that the amendment's inclusion of "collective bargaining agreements as a type of regulated sole source government contract" violated the First and Fourteenth U.S. Constitutional Amendments.[135] While the objective of Amendment 54 was to prevent the appearance of impropriety, the limit on the first amendment rights of unions "silence[s] the political voice that the *Buckley* Court took pains to protect, it diminishes the voice of members of labor unions, and governments cannot elect the union in which it contracts.[136] The court also found that the specific treatment of labor unions produced "dissimilar treatment of similarly situated individuals," and was therefore unconstitutional in regards to the 14th Amendment.[137] "Unions present little threat of pay-to-play corruption because employees volitionally elect to be (or not to be) represented by a specific union prior to negotiating a new collective bargaining agreement, and in turn, the state must negotiate with that union regardless of its preferences."[138] Overall, Amendment 54's over-broadness and limits on unions went too far—even for some of the strongest supporters of pay-to-play laws—and was overturned by the court for just that reason.

Conclusion

"You wonder what in the heck would happen if I didn't give," said one government contractor for Wayne County, Michigan. Another local contractor said, "I'd rather contribute than not… [there's] a feeling of better safe than sorry [among contractors]."[139]

It has been widely acknowledged that pay-to-play practices undermine fair competition while increasing taxpayer costs. To help end this practice, several federal, state and local governments have enacted various types of pay-to-play laws and regulations designed to prevent and deter corruption in the government contracting process. These laws and regulations generally seek to "prohibit or restrict the amount of contributions which a potential or current contractor, certain

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[131] Id., at 627
[132] Id., at 629
[133] Id., at 630
[134] Id., at 631
[135] Id., at 631
[136] Id., at 633
[137] Id., at 634
[138] Id., at 635
[139] Id.

employees, and affiliated Political Action Committees ("PACs") can make to a candidate running for public office."[140]

Allowing government contractors to donate money to those who have the authority to influence the awarding of government contracts raises "serious corruption and bias concerns."[141] With very few exceptions, the courts have found that pay-to-play laws and policies prohibiting government contractors from making political contributions are "designed to combat both actual corruption and the appearance of corruption caused by contractor contributions."[142] As such, pay-to-play law are specifically designed to improve the government contracting process, not to reform the campaign finance system generally.

The case record demonstrates the dire need for pay-to-play restrictions over the government contracting process at the federal, state and local levels. There is a long history of potential contractors making extensive use of campaign contributions to gain access and curry favor with those officials who can influence the awarding of contracts, and this history of scandal and corruption is found in all types of jurisdictions. Wherever lucrative government contracts can be won, the situation for winning though campaign contributions presents itself.

Contractors who abuse pay-to-play practices are of all types – individuals and business – plying for government contracts in all kinds of businesses – municipal bond business to highway construction contracts – and seeking to win those government contracts through campaign contributions of widely varying amounts – small and large. The original federal pay-to-play restriction resulted from a series of scandals in which federal contractors were often treated as federal employees, expected to pay political tribute for the privilege of receiving a government contract. Rule G-37 emerged as both business entities and individual municipal finance professionals doled out campaign contributions to be considered for underwriting municipal securities contracts. Once the MSRB and SEC restricted pay-to-play practices for these dealers, the agencies once again had to expand the restriction to cover a new wave of individuals in the securities contracting business exploiting pay-to-play practices as "financial advisors."

The experience in the states also shows pay-to-play practices being abused by both individuals and firms seeking government contracts. Large contributions from wealthy individuals in Connecticut and New Mexico are widely attributed with buying contracts, while modest contributions from individuals such as municipal finance professionals and financial advisors in the securities business and Tom Noe in Ohio produced the same result. Sometimes, as in Kentucky, campaign contributions as little as $100 could influence the awarding of government contracts. Other times, individuals of a firm would bundle their campaign contributions, or the business entity itself would make direct contributions, in order to pay-to-play.

In all these cases, the method and objective are the same: gaining the upper hand in consideration for government contracts by making campaign contributions to those responsible for awarding

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[140] STATE AND LOCAL PAY-TO-PLAY LAWS: LEGISLATION AND COMPLIANCE, 1760 PLI/Corp 529 , 533

[141] Boardman, Michael, "Constitutional Conditions: Regulating Independent Political Expenditures by Government Contractors After Citizens United," *Florida State University Business Review* (2011), 33.

[142] *Green Party*, 616 F.3d at 189.

the contracts. It does not matter if the pay-to-play practices are exercised by individuals or businesses, the damage is also the same: undercutting the integrity of the government contracting process.

sifma
Invested in America

September 30, 2014

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend Its Provisions to Municipal Advisors; MSRB Regulatory Notice 2014-15

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments on the Municipal Securities Rulemaking Board ("MSRB") Regulatory Notice 2014-15 ("Notice") containing draft amendments to MSRB Rule G-37 ("Draft Amendments") on political contributions by municipal securities dealers ("Dealers") and related prohibitions on municipal securities business, extending the Rule to cover municipal advisors and making certain other changes impacting both Dealers and municipal advisors.

I. Executive Summary

SIFMA commends the MSRB for taking steps with the Draft Amendments to create a level playing field for all market participants in the area of political contributions. SIFMA believes that it is important that all market participants are subject to the same rules governing political activity, and the Draft Amendments significantly advance that interest. However, SIFMA is submitting these comments to further bring consistency among market participants and in consideration of the heightened constitutional standards set forth in the Supreme Court's decision in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

In *McCutcheon*, the Supreme Court voices strong support for the right to make political contributions in its decision to invalidate the aggregate contribution limits of the Federal Election Campaign Act of 1971, as amended. *See* 134 S. Ct. 1434 (2014). In so doing, the Court makes clear two principles which are relevant to any restriction on political contributions – first, that political contributions may be restricted only to prevent actual *quid pro quo* corruption or the appearance thereof and, second, that the need for such restrictions must not be based on speculation. *Id*. at 1441, 1456. We applaud the MSRB's effort, as stated on page 6 of the Notice, to require a link between a contribution to an official and a consequent prohibition on business under Rule G-37 (the "Rule"). The existence of such a link is essential for the Rule to be tailored in a manner that is constitutionally appropriate under *McCutcheon*. It is in furtherance of this effort to ensure that Rule G-37 is closely drawn to its stated objective and to level the playing field among market participants that SIFMA offers the following specific comments:

- The time period between SEC approval of the Draft Amendments and their effective date, proposed to be two weeks, should be lengthened to at least 6 months as has been the case in other, similar "pay-to-play" rules.

- The definition of "municipal advisor representative" should be revised to include only those associated persons primarily engaged in municipal advisory activities, in conformity with the definition of "municipal finance representative" for Dealers.

- The *de minimis* exception for political contributions to candidates for whom an individual is entitled to vote under Rule G-37 ($250) should be revised to be consistent with the analogous *de minimis* exceptions under SEC Rule 206(4)-5 for investment advisers and CFTC Rule 23.451 for swap-dealers ($350). Additionally, the "look-back" provision of the Rule should be revised to include an exception for any contributions made by an individual who was covered by the SEC or CFTC pay-to-play rules at the time of the contribution and contributed within the *de minimis* amounts under those rules.

- The cross-ban provision for Dealer municipal advisors should be eliminated in that it is overly broad and does not serve the purpose of attempting to eliminate contributions that are linked to the relevant business.

- The Draft Amendments impose a strict-liability ban on a Dealer or municipal advisor as a result of a political contribution made by its third-party municipal advisor solicitors. Creating such strict liability for a third party's activities is antithetical to the well-established precept that they are not controlled by their clients, and, as a practical matter, it is impossible for

Dealers and municipal advisors to police them. Thus, the Draft Amendments should be revised to eliminate the inclusion of third parties in this ban.

- The Draft Amendments modify the two-year ban to extend the end-date to two years after the date on which the Dealer or municipal advisor is able to transition out of the business with all affected government entities, a transition period that may be required by a municipal advisor's fiduciary duties. This extension, however, is not limited to the government entity subject to the transition, but rather applies to municipal advisor and Dealer business with any government entity affected by the contribution. This should be modified to extend the ban only for business with the entity with which the Dealer or municipal advisor is engaged at the time of the contribution, and not all entities of which the contribution's recipient may be an official.

II. Comments on Content of the Draft Amendments

A. Effective Date

The Draft Amendments' expansion of Rule G-37's contribution restrictions are proposed to take effect only two weeks following final approval by the SEC. Two weeks is an insufficient period of time to implement the policy changes and training programs required to comply with the Draft Amendments, even for Dealers that have years of experience with existing Rule G-37's requirements, let alone for municipal advisors that have never before been subject to any similar regulatory regime.

Indeed, in recognition of such difficulty in implementing procedures, other pay-to-play rules have provided significantly longer periods of time for regulated entities to comply with their provisions. For instance, when the SEC approved the final text of SEC Rule 206(4)-5 on June 30, 2010, it provided that the rule would not be effective until 60 days following publication in the Federal Register and the compliance date was set for 6 months after that. The CFTC similarly provided a minimum of 6 months between the effective date of Rule 23.451 and its compliance date. If the Draft Amendments were simply an extension of existing Rule G-37 to municipal advisors, establishing a compliance period shorter than 6 months may be more justifiable. However, the Draft Amendments introduce a number of new requirements to the existing rule for Dealers, making compliance no less complicated than with an entirely new rule. Additionally, by extending the Rule's provisions to municipal advisors, the Draft Amendments potentially cover a range of employees in various different business units of large firms, further increasing the difficulties of adopting appropriate compliance procedures. In light of these

complexities, it is appropriate to provide at least as much time before the Draft Amendments become effective as was provided upon the final adoption of SEC Rule 206(4)-5 and CFTC Rule 23.451.

Accordingly, the Draft Amendments should be revised so that its compliance date is no sooner than 6 months following final SEC approval.

B. Municipal Advisor Representatives

The definition of "municipal advisor representative" is included within the definition of municipal advisor professional and, therefore, such individuals are among those whose contributions trigger an automatic prohibition on engaging in municipal advisory activities and, in the case of a Dealer municipal advisor, municipal securities business. The term is defined to mean "any associated person engaged in municipal advisory activities on the firm's behalf, other than a person whose functions are solely clerical or ministerial." The fact that the definition captures any non-clerical associated persons who engage in even a *de minimis* amount of municipal advisory activities is both overly broad and not aligned with the analogous term in the municipal securities prong of the Rule, municipal finance representative.

As noted above, the Supreme Court held in *McCutcheon* that regulating political contributions is permissible only to combat actual or apparent *quid pro quo* corruption, meaning an attempt to obtain a particular official's decision in exchange for money, or the appearance of such a scheme. *Id*. at 1441. Although it is arguable that contributions by an individual who is primarily engaged in covered activity could give rise to an appearance of *quid pro quo* corruption, inferring such corruption where an individual's primary responsibilities and activities are unrelated to such business is not tenable. Under *McCutcheon*, it is insufficient to speculate that contributions by such individuals need to be restricted; specific incidents of this category of individuals engaging in illicit conduct would need to exist and be asserted as a justification. *See id*. at 1456. The risk of contributions by individuals not primarily engaged in covered activity creating an appearance of *quid pro quo* corruption is greatly diminished and is unsupported by specific allegations such that it does not warrant an intrusion into the First Amendment rights of such individuals.

The need for a sufficient nexus between the responsibilities of an associated person and regulated business is recognized by the MSRB in its drafting of existing Rule G-37, as the definition of a municipal finance representative includes only those associated persons primarily engaged in municipal securities business. There is no meaningful distinction between the goals of the two prongs of the Rule as amended by the Draft Amendments that would warrant the broader definition of municipal advisor representative, especially given the imperative that the MSRB

has placed on tailoring the Rule to circumstances where there is a link between a contribution and a ban on business.

Finally, in SEC Rule 206(4)-5 and CFTC Rule 23.451, employees who engage in covered investment advisory or swap-dealer activity are not covered under such rules regardless of how much they engage in such activity. Rather, other than senior officers and supervisors, those rules only cover employees who solicit the covered business in that they are more likely to make contributions that are linked to obtaining the business.

Accordingly, the definition of municipal advisor representative in the Draft Amendments should be revised to include only those associated persons primarily engaged in municipal advisory activities.

C. Harmonize *De Minimis* Exceptions

MSRB Rule G-37 both currently and as amended by the Draft Amendments includes an exception for certain *de minimis* contributions made to officials of municipal entities. In order for this exception to apply, the contribution must not exceed $250 per election and must be made by a municipal finance professional or, under the Draft Amendments, a municipal advisor professional who is entitled to vote for the candidate. As such, the MSRB under Rule G-37 has historically recognized the importance of protecting the right of individuals to make political contributions to candidates for whom they are entitled to vote. While SIFMA recognizes the MSRB's reluctance to provide a *de minimis* exception for a contribution from a covered person to a candidate for whom they may not vote, we request that the *de minimis* exception when an individual is entitled to vote for a candidate be conformed to the $350 amount under SEC Rule 206(4)-5 and CFTC Rule 23.451.

Indeed, there does not appear to be any evidence supporting $250, $350 or any other specific dollar figure as the level at which a contribution exerts a corrupting influence, making the definition of a *de minimis* contribution somewhat arbitrary. However, to the extent a *de minimis* amount is exempted, it should be uniform across these rules. It is difficult to justify that $350 is a sufficient amount to corrupt an official with respect to municipal securities business, but not investment advisory services. Therefore, in order to ease the compliance burden on the many Dealer and municipal advisor firms also subject to the SEC and CFTC rules, SIFMA suggests that the Draft Amendments bring the *de minimis* exception of MSRB Rule G-37 into conformity with the exceptions in those rules for contributions to candidates for whom an individual may vote. The lack of uniformity amongst these three rules makes it difficult for firms to develop clear and comprehensive compliance systems and standards, and to provide employees

clear and consistent guidelines for permissible political activity which, consequently, imposes significant administrative burden and expense.[2] In bringing this *de minimis* exception into conformity with the other federal pay-to-play rules, covered individuals and the compliance personnel assisting them will need only concern themselves with a single limit for contributions to candidates for whom they may vote, while recognizing the MSRB's desire to limit the *de minimis* exception only to those individuals who are entitled to vote for a candidate. Harmonization of rules, as a general principal, reduces compliance costs and increases regulatory certainty.

Along similar lines, the Draft Amendments should also revise the Rule's "look-back" provision[3] to include an exception for a contribution made by an individual prior to becoming covered by Rule G-37; provided that, such individual was covered by either SEC Rule 206(4)-5 or CFTC Rule 23.451 at the time of the contribution and such contribution was within the *de minimis* exceptions under those rules, including the exception for contributions to candidates for whom one may not vote. Making such a change, along with the increase in the *de minimis* exception discussed above, would conform the limits with which an individual subject to the SEC and/or CFTC rules, but not yet covered by Rule G-37, would need to comply. Again, this would ease the compliance burden for firms subject to multiple rules in that they would not be required to apply different standards for employees subject to the SEC and/or CFTC rule who may at some point be covered by Rule G-37. At the same time, such an exception would in no way jeopardize the integrity of the municipal securities market given that contributions over $150/$350 under such circumstances would still trigger the ban provisions and individuals currently covered by the Rule would continue to be subject to an absolute prohibition on all contributions to candidates for whom they are not entitled to vote.

Accordingly, the Draft Amendments should be revised to (1) raise the current *de minimis* exception for contributions to officials for whom a municipal finance professional or municipal advisor professional is entitled to vote to $350 and (2) include an exception in the "look-back" context for a contribution made by

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[2] It should be noted that most, if not all, states maintain labor laws that prohibit companies from unreasonably restricting the outside political or personal activities of their employees, which essentially requires that companies subject to multiple pay-to-play rules permit employees to make contributions up to the maximum amount allowed by the applicable rule. Therefore, imposing an internal policy prohibiting contributions in excess of the lowest *de minimis* exception across the board, which may be easier to administer, is not a tenable option.

[3] Rule G-37, both currently and as amended by the Draft Amendments, may prohibit covered business as the result of a contribution made by an individual prior to his or her becoming a municipal finance professional or, under the Draft Amendments, a municipal advisor professional. This provision of the rule is commonly referred to as the "look-back."

an individual prior to becoming a municipal finance professional or municipal advisor professional; provided that, such individual was covered by either SEC Rule 206(4)-5 or CFTC Rule 23.451 at the time of the contribution and the contribution was within the *de minimis* exceptions under such rules.

D. Cross-Bans

The cross-ban provision of the Draft Amendments would prohibit a Dealer municipal advisor from engaging in municipal securities business as a result of a contribution by a municipal advisor professional to an official with dealer selection influence and, similarly, would apply in the converse situation where a municipal finance professional triggers a ban on municipal advisory activities (the "Cross-Ban"). As a result, a ban on business would be triggered by a contribution by an individual with an even more tenuous connection to the prohibited business than in the situation discussed above in section II. B. Here, an individual with no relationship whatsoever to municipal securities business would trigger a ban on her Dealer municipal advisor firm doing such business. Thus, it is unclear how Cross-Bans comport with the MSRB's stated goal of requiring a link between a contribution and covered business. Additionally, under the standard advanced in the *McCutcheon* decision, the risk of actual or apparent *quid pro quo* corruption stemming from a contribution to an official with selection influence wholly unrelated to the contributor's duties is too remote and speculative to justify imposing Cross-Bans. Indeed, the Cross-Ban provision assumes that a Dealer municipal advisor is using employees in the other divisions (such as the municipal securities division using municipal advisor professionals) to circumvent the Rule.

Accordingly, the Draft Amendments should be revised to eliminate the Cross-Ban provision.

E. Municipal Advisor Third-Party Solicitors

Under the Draft Amendments, a municipal advisor third-party solicitor engaged by a Dealer or municipal advisor to solicit municipal securities business, municipal advisory business, or investment advisory services on its behalf would trigger a ban for its client as a result of a contribution by it, its municipal advisor professionals, or any of their controlled PACs to an official of a municipal entity it was engaged to solicit. The expansion of the Rule to cover these persons is overly broad in certain cases and unfairly subjects market participants to a strict-liability prohibition on business for the actions of persons they cannot control.

Under the plain language of the Draft Amendments, the ban would apply to all of the client's municipal securities or municipal advisory business with an affected government entity regardless of which type of business it was engaged to

solicit. For example, a contribution by a municipal advisor third-party solicitor to an official with dealer selection influence would trigger a ban on municipal securities business even if it was engaged to solicit only municipal advisory business from that official's municipal entity. This lack of linkage is further exacerbated by the fact that a Dealer is barred from using third parties to solicit municipal securities business under MSRB Rule G-38. Furthermore, it is difficult to envision a situation in which a third-party would attempt to exert illicit control over an official decision regarding business it was not hired to obtain and, as the Supreme Court held in *McCutcheon*, mere speculation as to the possibility of corruption schemes are insufficient to form the basis for a restriction on contributions. *Id*. As such, there is no link sufficient to create a risk of *quid pro quo* corruption or the appearance thereof where a municipal advisor third-party solicitor makes contributions to officials with influence over business they are not attempting to obtain for a client.

Even where there could be a more direct link creating a risk of the appearance of *quid pro quo* corruption, subjecting market participants to an automatic prohibition on municipal securities business and/or municipal advisory activities as a result of a contribution made by an entity or individual not under its control or subject to its policies and procedures is an overly broad and unfair mechanism to prevent an appearance of *quid pro quo* corruption. There is no means by which a Dealer or municipal advisor can effectively prevent prohibited contributions by its third-party solicitors. While representations and warranties in solicitor contracts and training of their personnel may mitigate some risk, ultimately the Draft Amendments put Dealers' and municipal advisors' business in automatic jeopardy as if the third parties are agents of or supervised by the Dealer or municipal advisor. In addition to the impractical nature of imposing a strict-liability ban on business for actions of third parties, in doing so the Draft Amendments turn back a well-established precept that market participants do not control third parties. While clearly municipal advisor third-party solicitors may prevent themselves from engaging in certain business by their own actions, imposing such consequences on their clients would rewrite the current structure and understanding of such vendor-client relationships. It should be noted that the SEC, in drafting Rule 206(4)-5, initially imposed strict liability on an investment adviser for the contributions of its third-party solicitors, but eventually eliminated such a standard. In the current version of the SEC rule's placement agent provisions, advisers are not liable for such contributions, but must only ensure that third parties soliciting investment advisory business on their behalf are subject to a pay-to-play rule.

Accordingly, the Draft Amendments should be revised to exclude municipal advisor third-party solicitors, their municipal advisor professionals, and their controlled PACs from the group of persons that may trigger a ban on business for Dealers and municipal advisors. Alternatively, the Draft Amendments should be

clarified to impose a ban resulting from a contribution by municipal advisor third-party solicitors, their municipal advisor professionals, and their controlled PACs only when such contribution is made to an official with selection influence over the type of business the solicitor was engaged to solicit.

F. Modification of the Two-Year Ban

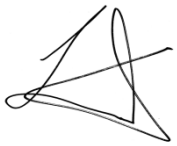
Under existing Rule G-37, a prohibited contribution triggers a ban on engaging in municipal securities business with any municipal entity of which the recipient is an "official of an issuer" beginning from the date of the contribution and ending two years after such date. The Draft Amendments extend the end-date of this period to two years after all municipal securities business or municipal advisory business, as applicable, with such municipal entity ceases. This extension permits a Dealer or municipal advisor to engage in an orderly transition period out of the prohibited business, while still being subject to the full two-year ban. However, in cases where the recipient of a prohibited contribution is a covered official of multiple governmental entities, the Draft Amendments would prohibit a firm from engaging in covered business with each of them for that extended period of time even if the transition period was required for only one of them. Accordingly, the firm could be unfairly prohibited from doing business with certain entities for a period of time in excess of two years.

While we understand the need to extend the ban when it comes to necessary transition services for a particular government entity, there is no justification to extend the ban to government entities for which transition services are not necessary. Indeed, by limiting the extended ban to the particular government entity, the net effect for non-affected government entities would be a two-year ban, the period intended under the rule. Thus, the modification of the two-year ban should be tailored to apply only to any entity with which a firm engages in the covered business beyond the date of the contribution to permit an orderly transition, allowing the prohibition on business with all other entities impacted by the contribution to expire two years after the date of the contribution.

* * *

Please do not hesitate to contact me at (212) 313-1130, or our counsel, Ki P. Hong or Charles M. Ricciardelli of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7017 with any questions.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Gary L. Goldsholle, General Counsel
Michael L. Post, Deputy General Counsel
Sharon Zackula, Associate General Counsel
Saliha Olgun, Counsel

WM Financial Strategies

11710 ADMINISTRATION DRIVE
SUITE 7
ST. LOUIS, MISSOURI 63146
(314) 423-2122

October 1, 2014

Municipal Securities Rulemaking Board
Attention: Ronald W. Smith, Corporate Secretary
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: Comments to Rule G-37

Ladies and Gentlemen:

I am a sole proprietor doing business as WM Financial Strategies. I have a career devoted entirely to public finance and have been an independent financial advisor (now known as a Municipal Advisor) since 1989. In my capacity as an independent Municipal Advisor, I am writing to set forth my comments relating to the Municipal Securities Rulemaking Board's Rule G-37.

I am fully supportive of the ban on political contributions included in Rule G-37 and have only a few comments relating to the Rule as described below:

1. Remove the concept of two types of officials

By attempting to make a distinction between an "official with dealer selection influence" and an "official with municipal advisor selection influence" the MSRB has created a complicated and difficult to enforce Rule. I am not aware of any elected official that would be able to influence the selection of a municipal advisor without also having the ability to influence the selection of an underwriter. As presently written, it appears that a new loophole for broker-dealers is being created. The problems noted above can all be eliminated and the rule can be substantially simplified by eliminating all political contributions to elected officials of municipal entities except for the $250 de-minimis exemption.

2. Consider the Regulatory Burdens Imposed on Municipal Advisors as Required under the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") mandates the Municipal Securities Rulemaking Board (the "MSRB") to establish rules relating to the conduct and qualifications of Municipal Advisors. In addition, the Dodd-Frank Act states that the MSRB may ***"not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors…"***

As a result of the foregoing, a Municipal Advisor should not be required to prepare or file any specific documentation relating to contributions in any reporting period in which no contributions of any kind have been made. I understand this is the intent of the rule as presently drafted; however, further clarification would be helpful.

3. **Consider a ban on contributions to bond ballot campaigns.**

I would like the MSRB to consider banning contributions to bond ballot campaigns. Bond ballot campaign contributions, when made outside of an individual's voting jurisdiction, are a form of pay-to-play that taint the integrity of the municipal market and should be prohibited.

In 2005, at the Bond Market Association's 10th Legal and Compliance Conference, Martha Mahan Haines, then chief of the SEC's Office of Municipal Securities, suggested that contributions for bond referenda is a pay-to-play activity.

On January 7, 2009, *The Bond Buyer* reported that the MSRB was reviewing rule G-37. *The Bond Buyer's* article followed the submission of a December 2008 letter to the MSRB by executives from Citi, JP Morgan and Morgan Stanley suggesting that bond election contributions could cause an underwriter to be selected and that a level playing field is needed for all underwriters.

At its April 2009 meeting, the MSRB elected not to place a ban on contributions for bond referenda. The MSRB's press release stated that "The Board determined that, based on the information it has been able to gather, there is not adequate evidence to suggest that bond ballot campaign contributions have a negative effect on the integrity of the municipal marketplace."

In January 2010, the MSRB amended Rule G-37 to require disclosure of contributions for bond elections (other than a contribution 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). The MSRB indicated that it would study the contribution disclosures and later determine whether restrictions would be placed on election contributions. With the passage of more than four years, the MSRB has now had sufficient opportunity to gather fact finding data to determine whether restrictions should be placed on election contributions.

Sincerely,

Joy A Howard

Joy A. Howard
Principal

EXHIBIT 3

FORM G-37 **MSRB**

Name of [dealer] Regulated Entity: _____

Report [period] Period:

_____

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

State	Complete name, title (including any city/county/state or other political subdivision) of [issuer] municipal entity official	Contributions by each contributor category (*i.e.*, for purposes of this form, dealer, dealer controlled PAC, municipal finance professional, municipal finance professional controlled PAC, [municipal finance professionals and] non-MFP executive officer[s], 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 [(*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each payment, list payment amount and contributor category (For example, $500 payment by non-MFP executive officer)]

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 [*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each contribution, list contribution amount and contributor category (For example, $500 contribution by non-MFP executive officer)]

B. Reimbursement for Contributions

List below any payments or reimbursements, related to any disclosed bond ballot contribution, received by each [broker, dealer or municipal securities dealer] dealer, municipal finance professional, [or] 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 [dealer] 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, [agency offering] private placement, financial advisor, or remarketing agent)

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))

[B.]C. Ballot-Approved Offerings

Full [issuer] name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which each contributor category [(*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers)] has made a contribution and the reportable date of selection on which the [broker, dealer or municipal securities dealer] regulated entity was selected to engage in [such] the municipal securities business or municipal advisory business.

Full [Issuer] Name of Municipal Entity	Full Issue Description	Reportable Date of Selection

Signature: _____ **Date:** _____

(must be officer of [dealer] regulated entity)

Name: _____

Address: _____

Phone: _____

Submit <u>to the Municipal Securities Rulemaking Board</u> [two] <u>a</u> completed form[s] quarterly by due date (specified by the MSRB) [to:]

[Municipal Securities Rulemaking Board

1300 I Street NW
Suite 1000
Washington, DC 20005-3314]

FORM G-37x **MSRB**

Name of [dealer] Regulated Entity:

_____

The undersigned, on behalf of the [dealer] regulated entity identified above, does hereby certify that such [dealer] 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 [dealer] regulated entity, does hereby acknowledge that, notwithstanding the submission of this Form G-37x to the MSRB, such [dealer] 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)[(K)] 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 [dealer] 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 [said] the exemption.

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

Name: _____ **Phone:** _____

Address: _____

Submit to the Municipal Securities Rulemaking Board

[Submit to: **Municipal Securities Rulemaking Board**
1300 I Street NW
Suite 1000
Washington, DC 20005-3314]

EXHIBIT 5

Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

(a) *Purpose*. The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities [industry] market are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors, municipal entities, obligated persons and the public interest by:

(i) prohibiting brokers, dealers and municipal securities dealers (collectively, "dealers") from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with [issuers] municipal entities if certain political contributions have been made to officials of such [issuers] municipal entities; and

(ii) requiring [brokers, dealers and municipal securities dealers] dealers and municipal advisors to disclose certain political contributions, as well as other information, to allow public scrutiny of such political contributions, [and] the municipal securities business of [a broker, dealer or municipal securities dealer] dealers and the municipal advisory business of municipal advisors.

(b) *Ban on Municipal Securities Business or Municipal Advisory Business; Excluded Contributions*.

(i) *Two-Year Ban.*

(A) *Brokers, Dealers and Municipal Securities Dealers.* No [broker, dealer or municipal securities dealer] dealer shall engage in municipal securities business with [an issuer] a municipal entity within two years after [any] a contribution to an official of such [issuer] municipal entity with dealer selection influence, as defined in paragraph (g)(xvi)(A) of this rule, made by[:(A)] the [broker, dealer or municipal securities dealer] dealer; [(B) any] a municipal finance professional [associated with such broker, dealer or municipal securities dealer] of the dealer; or [(C) any] a political action committee controlled by either [the broker, dealer or municipal securities dealer] the dealer or [by any] a municipal finance professional of the dealer.[;]

(B) *Municipal Advisors.* No municipal advisor (excluding a municipal advisor third-party solicitor) shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with municipal advisor selection influence, as defined in paragraph (g)(xvi)(B) of this rule, made by the municipal advisor; a municipal advisor professional of the municipal advisor; or a political action committee controlled by either the municipal advisor or a municipal advisor professional of the municipal advisor.

(C) *Municipal Advisor Third-Party Solicitors.*

(1) *Municipal Advisor Third-Party Solicitors*. No municipal advisor third-party solicitor shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B) or (C) of this rule, as applicable, made by the municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor.

(2) *Regulated Entity Clients of a Municipal Advisor Third-Party Solicitor*. If a contribution is made by a municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor, the following shall apply.

(a) In the case of an engagement of the municipal advisor third-party solicitor by a dealer to solicit a municipal entity on behalf of the dealer, if the contribution is made to an official of a municipal entity with dealer selection influence, the prohibition on municipal securities business in paragraph (b)(i)(A) of this rule shall apply to the retaining dealer for two years following the contribution.

(b) In the case of an engagement of the municipal advisor third-party solicitor by a municipal advisor to solicit a municipal entity on behalf of the municipal advisor, if the contribution is made to an official of a municipal entity with municipal advisor selection influence, the prohibition on municipal advisory business in paragraph (b)(i)(B) of this rule shall apply to the retaining municipal advisor for two years following the contribution.

(D) *Cross-Bans for Dealer-Municipal Advisors.* In the case of a regulated entity that is both a dealer and a municipal advisor (a "dealer-municipal advisor"), the prohibition on municipal securities business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with dealer selection influence by a municipal advisor professional of the dealer-municipal advisor or a political action committee controlled by a municipal advisor professional of the dealer-municipal advisor; and the prohibition on municipal advisory business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with municipal advisor selection influence by a municipal finance professional of the dealer-municipal advisor or a political action committee controlled by a municipal finance professional of the dealer-municipal advisor.

(E) *Orderly Transition Period.* A dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a

municipal entity and during the period of the engagement becomes subject to a prohibition under subsection (b)(i) of this rule may, notwithstanding such prohibition, continue to engage in the municipal securities business or municipal advisory business (except soliciting), as applicable, to allow for an orderly transition to another entity to engage in such business and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to the municipal entity; provided, however, that such transition period must be as short a period of time as possible and that the prohibition under subsection (b)(i) of this rule shall be extended by the duration of the orderly transition period.

(ii) Excluded Contributions. A contribution to an official of a municipal entity will not subject a dealer or municipal advisor to a ban on business under subsection (b)(i) of this rule if the contribution meets the specific conditions of an exclusion set forth below.

(A) *Voting Right/De Minimis Contribution.* The contribution is made by a municipal finance professional or municipal advisor professional who is entitled to vote for the official of the municipal entity and the contribution and any other contribution made to the official of the municipal entity by such person in total do not exceed $250 per election.

[provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of $250 by any municipal finance professional to each official of such issuer, per election.]

(B) *Contributions Made Before Becoming a Dealer Solicitor or Municipal Advisor Solicitor.* The contribution is made by a natural person who: (1) at the time of the contribution was not a municipal finance professional or municipal advisor professional; (2) became and is a municipal finance professional, or municipal advisor professional, or both, solely on the basis of being a dealer solicitor and/or municipal advisor solicitor; and (3) since becoming a municipal finance professional and/or municipal advisor professional has not solicited the municipal entity; provided, however, that this non-solicitation condition is not required for this exclusion after two years have elapsed since the making of the contribution.

[(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.]

(C) *Contributions Made by Certain Persons More Than Six Months Before Becoming a Municipal Finance Professional or Municipal Advisor Professional.* The

contribution is made by a person who is either or both of the following: (1) a municipal finance professional solely based on activities as a municipal finance principal, dealer supervisory chain person, or dealer executive officer, and the contribution was made more than six months before becoming a municipal finance professional or; (2) a municipal advisor professional solely based on activities as a municipal advisor principal, municipal advisor supervisory chain person, or municipal advisor executive officer, and the contribution was made more than six months before becoming a municipal advisor professional.

[(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the period beginning six months prior to the individual becoming a municipal finance professional.]

(c) *Prohibition on Soliciting and Coordinating Contributions and Payments*.

(i) *Contributions.* No [broker, dealer or municipal securities dealer] dealer or [any] municipal finance professional of the [broker, dealer or municipal securities dealer] dealer shall solicit any person[,] (including but not limited to any affiliated entity of the [broker, dealer or municipal securities dealer,] dealer) or political action committee to make any contribution, or [shall] coordinate any contributions, to an official of [an issuer] a municipal entity with dealer selection influence with which municipal entity the [broker, dealer or municipal securities dealer] dealer is engaging, or is seeking to engage in municipal securities business. No municipal advisor or municipal advisor professional of the municipal advisor shall solicit any person (including but not limited to any affiliated entity of the municipal advisor) or political action committee to make any contribution, or coordinate any contributions, to an official of a municipal entity with municipal advisor selection influence with which municipal entity the municipal advisor is engaging, or is seeking to engage in municipal advisory business. In the case of a municipal advisor third-party solicitor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B), or (C) of this rule, as applicable, by the municipal advisor third-party solicitor, or any municipal advisor professional of the municipal advisor third-party solicitor. In the case of a dealer-municipal advisor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with dealer selection influence or an official of a municipal entity with municipal advisor selection influence by the dealer-municipal advisor, any municipal finance professional of the dealer-municipal advisor and any municipal advisor professional of the dealer-municipal advisor.

(ii) *Payments.* No [broker, dealer or municipal securities dealer] dealer, municipal advisor, municipal finance representative, municipal advisor representative, dealer solicitor, municipal advisor solicitor, municipal finance principal or municipal advisor principal [or any individual designated as a municipal finance professional of the broker, dealer or municipal securities dealer pursuant to subparagraphs (A), (B), or (C) of paragraph (g)(iv) of this rule] shall solicit any person[,] (including but not limited to any affiliated entity of the [broker, dealer or

municipal securities dealer,] dealer or municipal advisor) or political action committee to make any payment, or [shall] coordinate any payments, to a political party of a state or locality where the [broker, dealer or municipal securities dealer] dealer or municipal advisor is engaging, or is seeking to engage in municipal securities business or municipal advisory business, as applicable.

(d) *Prohibition on Circumvention of Rule*. No [broker, dealer or municipal securities dealer] dealer, municipal advisor, [or any] municipal finance professional or municipal advisor professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e) *Required Disclosure to Board.*

(i) [Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall,] Each regulated entity must submit to the Board by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) [send to the Board] Form G-37 [setting forth] containing, in the prescribed format, the following information:

(A) for any contribution[s] to an official[s] of [issuers] a municipal entity (other than a contribution made by a municipal finance professional [or a], municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity to an official of [an issuer] a municipal entity for whom such person is entitled to vote if all contributions by such person to such official of [an issuer] a municipal entity, in total, do not exceed $250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional [or a], municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity to a political party of a state or [a] political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed $250 per year) made by the persons and entities described in [subclause (2) of this clause (A)] subparagraph (e)(i)(A)(2) below:

(1) listing by state, the name and title (including any city/county/state or political subdivision) of each official of [an issuer] a municipal entity and political party [receiving contributions or payments] that received a contribution or payment during such calendar quarter[, listed by state];

(2) the contribution or payment amount made and the contributor category for [of each of the following persons and entities making] such contributions or payments during such calendar quarter, as specified below:

(a) If a regulated entity, the identity of the contributor as a [the broker, dealer or municipal securities dealer] dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a [each] municipal finance professional[; (c) each], municipal advisor

professional, non-MFP executive officer[; and] or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

[(d)](c) If a political action committee, the identity as a [each] political action committee controlled by the [broker, dealer or municipal securities dealer] regulated entity or [by] any municipal finance professional or municipal advisor professional of the regulated entity;

(B) for any contribution[s] to a bond ballot campaign[s] (other than a contribution made by a municipal finance professional, municipal advisor professional, [or a] non-MFP executive officer or non-MAP executive officer of the regulated entity 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) made by the persons and entities described in [subclause (2) of this clause (B)] subparagraph (e)(i)(B)(2) below:

(1) listing by state, the official name of each bond ballot campaign receiving a contribution[s] during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued[, listed by state];

(2) the contribution amount [made] (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign), the specific date on which the contribution was made, and the contributor category for [of each of the following persons and entities making] such contributions during such calendar quarter as specified below:

(a) If a regulated entity, the identity of the contributor as a [the broker, dealer or municipal securities dealer] dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a [each] municipal finance professional[; (c) each], municipal advisor professional, non-MFP executive officer[; and] or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

[(d)](c) If a political action committee, the identity as a [each] political action committee controlled by the [broker, dealer or municipal securities dealer or by] regulated entity or any municipal finance professional or municipal advisor professional of the regulated entity;

(3) the full [issuer] name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to [this clause (B)] paragraph (e)(i)(B) of this rule has been made, or to which a contribution has been

made by a municipal finance professional, municipal advisor professional, [or a] non-MFP executive officer or non-MAP executive officer during the period beginning two years prior to such [individual becoming a municipal finance professional or a non-MFP executive officer] person acquiring such status that would have been required to be disclosed if such [individual] person had [been a municipal finance professional or a non-MFP executive officer] acquired such status at the time of such contribution and the reportable date of selection on which the [broker, dealer or municipal securities dealer] regulated entity was selected to engage in [such] the municipal securities business or municipal advisory business, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) [the] any payment[s] or reimbursement[s], related to any contribution to any bond ballot [contribution,] campaign received by [each broker, dealer or municipal securities dealer] the regulated entity or any of its municipal finance professionals or municipal advisor professionals from any third party that are required to be disclosed pursuant to [this clause (B)] paragraph (e)(i)(B) of this rule, including the amount paid and the name of the third party making such payment or reimbursement.

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

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

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

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

The Board shall make public a copy of each Form G-37 received from any [broker, dealer or municipal securities dealer] regulated entity.

(ii) No [broker, dealer or municipal securities dealer] regulated entity shall be required to [send] submit Form G-37 to the Board for any calendar quarter in which either:

(A) such [broker, dealer or municipal securities dealer] regulated entity has no information that is required to be reported pursuant to [clauses] paragraphs (e)(i)(A) through (D) of [paragraph (e)(i)] this rule for such calendar quarter; or

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

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

(2) has [sent] submitted to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such [broker, dealer or municipal securities dealer] regulated entity did not engage in municipal securities business or municipal advisory business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such [broker, dealer or municipal securities dealer] regulated entity in connection with Forms G-37 and G-37x under [this paragraph] subsection (e)(ii) of this rule and [rule] Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, and (c) such other identifying information required by Form G-37x; provided, however, that[,] if a [broker, dealer or municipal securities dealer] regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the submission of Form G-37x to the Board, such [broker, dealer or municipal securities dealer] regulated entity shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any [broker, dealer or municipal securities dealer] regulated entity.

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

(iv) A [broker, dealer or municipal securities dealer] regulated entity that submits Form G-37 or Form G-37x to the Board shall [either:]

[(A) send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or]

[(B)] submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37, [and] G-37x and G-38t*.

(f) *Voluntary Disclosure to Board*. The Board will accept additional information related to contributions made to officials of [issuers] municipal entities and bond ballot campaigns and payments made to political parties of states and political subdivisions voluntarily submitted by

[brokers, dealers or municipal securities dealers] regulated entities or others, provided that such information is submitted otherwise in accordance with section (e) of this rule.

(g) *Definitions*.

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

[(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.]

[(iv)](ii) [The term "municipal] "Municipal finance professional" means:

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

(B) any "dealer solicitor" - any associated person [(including but not limited to any affiliated person of the broker, dealer or municipal securities dealer, as defined in rule G-38) who solicits municipal securities business] who is a municipal solicitor as defined in paragraph (g)(xiii)(A) of this rule;

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

(D) any "dealer supervisory chain person" - any associated person who is a supervisor of any [person described in subparagraph (C)] municipal finance principal up through and including, in the case of a [broker, dealer or municipal securities dealer] 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] by [rule] Rule G-1(a)(1)(A); or

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

Each person designated by the [broker, dealer or municipal securities dealer] dealer as a municipal finance professional pursuant to [rule] Rule G-8(a)(xvi) is deemed to be a municipal finance professional[.] and [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.

(iii) "Municipal advisor professional" means:

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

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

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

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

(E) any "municipal advisor executive officer" – any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

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

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

[(x)](v) [The term "bond] "Bond ballot campaign" means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking

authorization for the issuance of municipal securities through public approval obtained by popular vote.

[(i)](vi) [The term "contribution] "Contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) to an official of [an issuer] a municipal entity:

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

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

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

(B) to a bond ballot campaign:

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

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

(3) for payment of the costs of conducting any such ballot initiative.

[(ii)](vii) [The term "issuer] "Issuer" means the governmental issuer specified in [section] Section 3(a)(29) of the Act.

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

(ix) "Municipal advisory business" means those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder, including: (A) the provision of advice to or on behalf of a municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues and (B) the solicitation of a municipal entity or obligated person, within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder.

(x) "Municipal advisor third-party solicitor" means a municipal advisor that is currently soliciting a municipal entity, is engaged to solicit a municipal entity, or is seeking to be engaged to solicit a municipal entity for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment

Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

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

[(vii)](xii) [The term "municipal] "Municipal securities business" means:

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

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

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

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

(xiii) "Municipal solicitor" means:

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

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

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

(xiv) "Non-MAP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank, as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder), but does not include any municipal advisor professional, as defined in subsection (g)(iii) of this rule; provided, however, that if no associated person of the municipal advisor meets the definition of municipal advisor professional, the municipal

advisor shall be deemed to have no non-MAP executive officers. Each person listed by the municipal advisor as a non-MAP executive officer pursuant to Rule G-8(h)(iii) is deemed to be a non-MAP executive officer.

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

[(vi)](xvi) [The term "official of such issuer" or "official of an issuer"] "Official of such municipal entity" or "official of a municipal entity," without further specification, means any person who meets the definition of at least one of paragraphs (g)(xvi)(A), (g)(xvi)(B), or (g)(xvi)(C) of this rule.

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

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

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

[(viii)](xvii) [The term "payment] "Payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

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

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

[(ix) Except as used in section (c), the term "solicit" means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i).]

(h) *Operative Date/Transitional Effect*. The [prohibition] prohibitions on engaging in municipal securities business and municipal advisory business, as described in section (b) of this rule, [arises] arise only from contributions made on or after [April 25, 1994][insert effective date to be announced by the MSRB in a regulatory notice published no later than two months following SEC approval, which effective date shall be no sooner than six months following publication of the regulatory notice and no later than one year following SEC approval]; provided, however, that any prohibition under this rule already in effect on [date one calendar day prior to effective date to be announced by the MSRB], shall be of the scope and continue for the length of time provided under Rule G-37 as in effect at the time of the contribution that resulted in such prohibition.

(i) *Application for Exemption*. Upon application, a ~~A~~ registered securities association with respect to a [broker, dealer or municipal securities dealer] dealer [who] that is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other [broker, dealer or municipal securities dealer] dealer, [upon application,] may, [exempt,] conditionally or unconditionally, exempt such dealer from a prohibition on municipal securities business in subsection (b)(i) of this rule [a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition]. Upon application, a registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission's designee, with respect to any other municipal advisor, may, conditionally or unconditionally, exempt such municipal advisor from a prohibition on municipal advisory business in subsection (b)(i) of this rule. In determining whether to grant such exemption, [the registered securities association or appropriate regulatory agency shall consider,] among other factors, the following shall be considered:

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

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

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

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

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

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

(j) *Automatic Exemptions*.

(i) A [broker, dealer or municipal securities dealer] regulated entity that is prohibited from engaging in municipal securities business or municipal advisory business with [an issuer] a municipal entity pursuant to subsection (b)(i) of this rule as a result of a contribution made by a

municipal finance professional or a municipal advisor professional, or a municipal advisor professional of a municipal advisor third-party solicitor on behalf of such regulated entity may exempt itself from such prohibition, subject to [subparagraphs] subsection (j)(ii) and subsection (j)(iii) of this [section] rule, upon satisfaction of the following requirements: [(1)](A) the [broker, dealer or municipal securities dealer] regulated entity must have discovered the contribution which resulted in the prohibition [on business] within four months of the date of such contribution; [(2)](B) such contribution must not have exceeded $250; and [(3)](C) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the [broker, dealer or municipal securities dealer] regulated entity.

(ii) A [broker, dealer or municipal securities dealer] regulated entity is entitled to no more than two automatic exemptions per 12-month period.

(iii) A [broker, dealer or municipal securities dealer] regulated entity may not execute more than one automatic exemption relating to contributions by the same [municipal finance professional] person regardless of the time period.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers[,] and Municipal Advisors

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xv) No change.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37.* Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal finance professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MFP executive officers;

(C) the states in which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business;

(D) a listing of [issuers] municipal entities with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along

with the type of municipal securities business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of [an issuer] a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of [an issuer] a municipal entity made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of [an issuer] a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of [an issuer] a municipal entity, per election. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal finance representative and each dealer solicitor as defined in [those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of] Rule G-37(g)(ii)[(iv)] and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in [those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of] Rule G-37(g)(ii)[(iv)] and for any political action committee controlled by such individuals and for any non-MFP executive officers; [and]

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, any political action committee controlled by a municipal finance professional, and non-MFP

executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments 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 payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal finance representative and each dealer solicitor as defined in [those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule] Rule G-37(g)(ii)[(iv)] and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in [those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule] Rule G-37(g)(ii)[(iv)] and for any political action committee controlled by such individuals and for any non-MFP executive officers[.];

(H) the contributions, direct or indirect, to bond ballot campaigns made by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full [issuer] name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the broker, dealer or municipal securities dealer or political action committee controlled by the broker, dealer or municipal securities dealer has made a contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in [such] the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the broker, dealer or municipal securities dealer from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment[.]; and

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional, any political action committee controlled by

a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full [issuer] name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal finance professional, political action committee controlled by the municipal finance professional or non-MFP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal finance professional or a non-MFP executive officer during the period beginning two years prior to such individual becoming a municipal finance professional or a non-MFP executive officer that would have been required to be disclosed if such individual had been a municipal finance professional or a non-MFP executive officer at the time of such contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in [such] the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal finance professional or non-MFP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution 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 made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) Brokers, dealers and municipal securities dealers shall maintain copies of the Forms G-37 and G-37x [sent] submitted to the Board along with [the certified or registered mail receipt or other] a record of [sending] submitting such forms to the Board.

(K) Terms used in this paragraph (xvi) have the same meaning as in [rule] Rule G-37.

(L) No change.

(M) No broker, dealer or municipal securities dealer shall be subject to the requirements of this paragraph (a)(xvi) during any period that such broker, dealer or municipal securities dealer has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of [rule] Rule G-37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to

comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker, dealer or municipal securities dealer that has been exempted by this clause (M)[(K)] from the requirements of this paragraph (a)(xvi) engages in any municipal securities business, all requirements of this paragraph (a)(xvi) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such broker, dealer or municipal securities dealer.

(xvii) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) No change.

(ii) Reserved.

(iii) [Reserved.] *Records Concerning Political Contributions and Prohibitions on Municipal Advisory Business Pursuant to Rule G-37.* Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal advisor professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MAP executive officers;

(C) the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business;

(D) a listing of municipal entities with which the municipal advisor has engaged in municipal advisory business, along with the type of municipal advisory business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the municipal advisor and each political action committee controlled by the municipal advisor for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of a municipal entity made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the municipal advisor discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to officials of a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of a municipal entity, per election. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal advisor professionals, any political action committee controlled by a municipal advisor professional, and non-MAP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal advisor professional or non-MAP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in

Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(H) the contributions, direct or indirect, to bond ballot campaigns made by the municipal advisor and each political action committee controlled by the municipal advisor for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor or political action committee controlled by the municipal advisor has made a contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment; and

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor professional, political action committee controlled by the municipal advisor professional or non-MAP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal advisor professional or a non-MAP executive officer during the period beginning two years prior to such individual becoming a municipal advisor professional or a non-MAP executive officer that would have been required to be disclosed if such individual had been a municipal advisor professional or a non-MAP executive officer at the time of such contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor professional or non-MAP

executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) Municipal advisors shall maintain copies of the Forms G-37 and G-37x submitted to the Board along with a record of submitting such forms to the Board.

(K) Terms used in this paragraph (iii) have the same meaning as in Rule G-37.

(L) No record is required by this paragraph (h)(iii) of:

(i) any municipal advisory business done or contribution to officials of municipal entities or political parties of states or political subdivisions; or

(ii) any payment to political parties of states or political subdivisions

if such municipal advisory business, contribution, or payment was made prior to [the effective date of the amendments to Rule G-37].

(M) No municipal advisor shall be subject to the requirements of this paragraph (h)(iii) during any period that such municipal advisor has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of Rule G-37; provided, however, that such municipal advisor shall remain obligated to comply with clause (H) of this paragraph (h)(iii) during such period of exemption. At such time as a municipal advisor that has been exempted by this clause (M) from the requirements of this paragraph (h)(iii) engages in any municipal advisory business, all requirements of this paragraph (h)(iii) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such municipal advisor.

(iv) Reserved.

(v) No change.

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Rule G-9: Preservation of Records

(a) - (g) No change.

(h) *Municipal Advisor Records.*

(i) Subject to subsections (ii) and (iii) of this section, every [Every] municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) [, provided that the] The records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(iii) The records described in Rule G-8(h)(iii) shall be preserved for at least six years; provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

(i) - (k) No change.

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