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[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

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

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:

<u>MFP Definition Components</u>	<u>Draft MAP Definition Components</u>
“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 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 breaches. 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 Amendments³⁶

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~~municipal finance professional ~~associated with such broker, dealer or municipal securities dealer~~of the dealer; or ~~(C) any~~political action committee controlled by ~~the broker, dealer or municipal securities dealer~~either the dealer or ~~by any~~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

~~(c)~~ (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~~ 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 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 [an issuer of 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.

(l) 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 Records³⁸

(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.

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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 <u>municipal entity</u> official	Contributions by each contributor category (<i>i.e.</i> , <u>for purposes of this form</u> , dealer, dealer controlled PAC, municipal finance professional, <u>municipal finance professional</u> controlled PAC, municipal finance professionals and non-MFP executive officers, <u>municipal advisor, municipal advisor controlled PAC, municipal advisor professional, municipal advisor professional controlled PAC, and non-MAP executive officer</u>). For each contribution, list contribution amount and contributor category (For example, \$500 contribution by non-MFP executive officer)
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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>i.e.</i> , 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)
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III. CONTRIBUTIONS made to bond ballot campaigns (list by state)

A. Contributions

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued and the name of the entity issuing the municipal securities	Contributions, including the specific date the contributions were made, by each contributor category (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)
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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 <u>private placement</u> , financial advisor, or remarketing agent)
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B. Municipal Advisory Business

State	<u>Complete name of issuer and city/county</u>	<u>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)</u>
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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