OMB APPROVAL	
OMB Number:	3235-0045
Expires:	August 31, 2011
Estimated average burden hours per response	38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32

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

File No.* SR - 2010 - * 07
Amendment No. (req. for Amendments *)

Proposed Rule Change by Municipal Securities Rulemaking Board

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

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

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

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

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

Interpretive notice providing guidance on dealer-affiliated political action committees under Rule G-37, on political contributions and prohibitions on municipal securities business

Contact Information

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

First Name * Leslie Last Name * Carey

Title * Associate General Counsel

E-mail * lcarey@msrb.org

Telephone * (703) 797-6600 Fax (703) 797-6700

Signature

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

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/25/2010

By Ronald W. Smith
(Name *)

Corporate Secretary
(Title *)

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

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document ☐

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "Commission"), a proposed rule change (the "proposed rule change") consisting of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business. The MSRB is requesting that the proposed rule change become effective sixty (60) days after approval by the Commission.

The text of the proposed rule change is set forth below, with underlining indicating new language.

* * * * * * * * *

GUIDANCE ON DEALER-AFFILIATED POLITICAL ACTION COMMITTEES UNDER RULE G-37

Since 1994, the Municipal Securities Rulemaking Board ("MSRB") has sought to eliminate pay-to-play practices in the municipal securities market through its Rule G-37, on political contributions and prohibitions on municipal securities business.[1] Under the rule, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees ("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs")[2] may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to record and disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs also are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.[3]

Due to changes in the financial markets since the adoption of Rule G-37, many dealers and MFPs have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make

contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business.

The MSRB remains concerned that individuals and firms subject to Rule G-37 may seek ways around the rule through payments to and contributions by affiliated PACs that benefit issuer officials. When evaluating whether contributions made by affiliated PACs may be subject to the provisions of Rule G-37, the MSRB emphasizes that dealers should first determine whether such affiliated PAC would be viewed as a dealer-controlled PAC. If an affiliated PAC is determined to be a dealer-controlled PAC, then its contributions to issuer officials would subject the dealer to the ban on municipal securities business and its contributions to issuer officials, state or local political parties, and bond ballot campaigns would be subject to disclosure under Rule G-37. Even if the affiliated PAC is determined not to be a dealer-controlled PAC, the dealer still must consider whether payments made by the dealer or its MFPs to such affiliated PAC could ultimately be viewed as an indirect contribution under Rule G-37(d) if, for example, the affiliated PAC is being used as a conduit for making a contribution to an issuer official.

The MSRB wishes to provide guidance regarding the factors that may result in an affiliated PAC being viewed as controlled by the dealer or an MFP of the dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G-37. The MSRB also wishes to ensure that the industry is cognizant of prior MSRB guidance regarding the potential for payments to and contributions by affiliated PACs to constitute indirect contributions under the rule.

Indicators of Control by Dealers and MFPs

Soon after adoption of Rule G-37, the MSRB stated that each dealer must determine whether a PAC is dealer controlled, with any PAC of a non-bank dealer assumed to be a dealer-controlled PAC.[4] The MSRB has also stated that the determination of whether a PAC of a bank dealer[5] is a dealer-controlled PAC would depend upon whether the bank dealer or anyone from the bank dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.[6] Such ability to direct or cause the direction of the management or the policies of a PAC also would be indicative of control of such PAC by a non-bank dealer or any of its MFPs, although it would not be the exclusive indicator of such control. While this guidance establishes basic principles with regard to making a determination of control, it does not set out an exhaustive list of circumstances under which a PAC may or may not be viewed as dealer or MFP controlled. The specific facts and circumstances regarding the creation,

management, operation and control of a particular PAC must be considered in making a determination of control with respect to such PAC.

Creation of PAC. In general, a dealer or MFP involved in the creation of a PAC would continue to be viewed as controlling such PAC unless and until such dealer or MFP becomes wholly disassociated in any direct or indirect manner with the PAC. Thus, any PAC created by a dealer, acting either in a sole capacity or together with other entities or individuals, would be presumed to be a dealer-controlled PAC. This presumption continues at least as long as the dealer or any MFP of the dealer retains any formal or informal role in connection with such PAC, regardless of whether such dealer or MFP has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any associated person of the dealer (either an individual, whether or not an MFP, or an affiliated company directly or indirectly controlling, controlled by or under common control with the dealer) has the ability to direct or cause the direction of the management or policies of the PAC. In effect, a dealer could not attempt to treat a PAC it created and then spun off to the control of an affiliated company as not being a dealer-controlled PAC. However, depending on the totality of the facts and circumstances, a PAC originally created by a dealer in which the dealer or its MFPs no longer retain any role, and with respect to which any other affiliates retain only very limited non-control roles, could be viewed as no longer controlled by the dealer.

Similarly, a PAC created by any person associated with the dealer at the time the PAC was created, acting either in a sole capacity or together with other entities or individuals, would be presumed to be controlled by such person. Such presumption continues at least for so long as such person retains any formal or informal role in connection with such PAC, regardless of whether any such person has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any other person associated with the same dealer as the creator of the PAC has the ability to direct or cause the direction of the management or policies of the PAC. Although such PAC may not be viewed as subject to Rule G-37 as an MFP-controlled PAC when originally created if such person was not then an MFP, if the person creating the PAC, or any other associated person with the ability to direct or cause the direction of the management or policies of such PAC, is or later becomes an MFP, such PAC would be deemed an MFP-controlled PAC.[7]

Management, Funding and Control of PAC. Beyond the role of the dealer, MFP or other person in creating a PAC and maintaining an ongoing association with such PAC, the ability to direct or cause the direction of the management or the policies of a PAC is also important. Strong indicators of management and control are not mitigated by the fact that such dealer, MFP or other person does not have exclusive, predominant or "majority" control of the PAC, its management, its policies, or its decisions with regard to making contributions. For example, the fact that a dealer or MFP may only have a single vote on a governing board or other decision-making or advisory board or

committee of a PAC, and therefore does not have sole power to cause the PAC to take any action, would not obviate the status of such dealer or MFP as having control of the PAC, so long as the dealer or MFP has the ability, alone or in conjunction with other similarly empowered entities or individuals, to direct or cause the direction of the management or the policies of the PAC. In essence, it is possible for a single PAC to be viewed as controlled by multiple different dealers if the control of such PAC is shared among such dealers, although the presumption of control may be rebutted as described below.

The level of funding provided by dealers and their MFPs to a PAC may also be indicative of control. A PAC that receives a majority of its funding from a single dealer (including the collective contributions of its MFPs and employees) or a single MFP is conclusively presumed to be controlled by such dealer or MFP, regardless of the lack of any of the other indicia of control described in this notice. Another important factor is the size or frequency of contributions by a dealer or MFP,[8] viewed in light of the size and frequency of contributions made by other contributors not affiliated in any way with such dealer or MFP. For example, a limited number of small contributions freely made by employees of a dealer to an affiliated PAC (*i.e.*, not directed by the dealer and not part of an automated or otherwise dealer-organized program of contributions) would not, by itself, automatically raise a presumption of dealer control so long as the collective contributions by the dealer or its employees is not significant as compared to the total funding of the affiliated PAC, subject to consideration of the other relevant facts and circumstances. In addition, contributions made by a dealer or MFP to an affiliated PAC could raise a stronger inference of *de facto* dealer or MFP control than when such contributions were made to non-affiliated PACs.

However, even where a dealer or MFP is not viewed as controlling a PAC under the principles described above, dealers should remain mindful of the potential for leveraging the contribution activities of affiliated PACs in soliciting municipal securities business in a way that could raise a presumption of dealer or MFP control. For example, an MFP's references to the contributions made by an affiliated PAC during solicitations of municipal securities business could, depending on the facts and circumstances, serve as evidence of coordination of such PAC's activities with the dealer or MFP that could, together with other facts, be indicative of direct or indirect control of the PAC by such dealer or MFP. Such control could be found even in circumstances where the dealer or its MFPs have not made contributions to the affiliated PAC.[9]

Of course, the presumptions described above may be rebutted, depending upon the totality of facts and circumstances. Considerations that may serve to rebut such presumptions may include whether the dealer or person creating the PAC: (i) participates with a broad-based group of other entities and/or individuals in creating the PAC, (ii) at no time undertakes any direct or indirect role (and, in the case of a dealer, no person associated with the dealer undertakes any direct or indirect role) in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the

PAC, and/or (iii) provides funding for such PAC (and, in the case of a dealer, its associated persons collectively provide funding for such PAC) that is not substantially greater than the typical funding levels of other participants in the PAC who do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC.

Indirect Contributions Through Bank PACs or Other Affiliated PACs

As noted above, if an affiliated PAC is determined not to be a dealer-controlled PAC, a dealer must still consider whether payments made by the dealer or its MFPs to such affiliated PAC could be viewed as an indirect contribution that would become subject to Rule G-37 pursuant to section (d) thereof. The MSRB has provided extensive guidance on such indirect contributions, noting in 1996 that, depending on the facts and circumstances, contributions to a non-dealer associated PAC that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would contributions made directly to the issuer official.[10] The MSRB also noted that dealers should make inquiries of a non-dealer associated PAC that is soliciting contributions in order to ensure that contributions to such a PAC would not be treated as an indirect contribution.[11]

The MSRB also has previously provided guidance in 2005 with regard to supervisory procedures[12] that dealers should have in place in connection with payments to a non-dealer associated PAC or a political party to avoid indirect rule violations of Rule G-37(d). In such guidance, the MSRB stated that, in order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[13] Among other things, dealers might seek to establish procedures requiring that, prior to the making of any contribution to a PAC, the dealer undertake certain due diligence inquiries regarding the intended use of such contributions, the motive for making the contribution and whether the contribution was solicited. Further, in order to ensure compliance with Rule G-37(d), dealers could consider establishing certain information barriers between any affiliated PACs and the dealer and its MFPs.[14] Dealers that have established such information barriers should review their adequacy to ensure that the affiliated entities' contributions, payments or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to the dealers and the MFPs.

The MSRB subsequently noted that the 2005 guidance did not establish an obligation to put in place the specific procedures and information barriers described in the guidance so long as the dealer in fact has and enforces other written supervisory procedures reasonably designed to ensure that the conduct of the dealer and its MFPs are in compliance with Rule G-37(d).[15] Thus, for example, when information regarding past or planned contributions of an affiliated PAC is or may be available to or known by the

dealer or its MFPs, the dealer might establish and enforce written supervisory procedures that prohibit the dealer or MFP from providing information to issuer personnel regarding past or anticipated affiliated PAC contributions.

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

[2] The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24 – Dealer Controlled PAC).

[3] Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance 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 the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

[4] *See* Rule G-37 Question & Answer No. IV. 24 (May 24, 1994).

[5] MSRB Rule D-8 defines a bank dealer as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.

[6] See Rule G-37 Question & Answer No. IV.24 (May 24, 1994).

[7] However, a PAC created by an individual acting in his or her formal capacity as an officer, employee, director or other representative of a dealer, regardless of whether such individual is an MFP, would be deemed a dealer-controlled PAC rather than a PAC controlled by the individual.

[8] A dealer or an MFP may make sufficiently large or frequent contributions to a PAC so as to obtain effective control over the PAC, depending on the totality of facts and circumstances.

[9] *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005) for a discussion of potential indirect contributions through affiliated PACs.

[10] *See* Rule G-37 Question & Answer No. III.4 (August 6, 1996).

[11] *See* Rule G-37 Question & Answer No. III.5 (August 6, 1996).

[12] Rule G-27, on supervision, provides in section (c) that each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules.

[13] *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005).

[14] The potential information barriers described in the guidance include: i) a prohibition on the dealer or MFP from recommending, nominating, appointing or approving the management of affiliated PACs; ii) a prohibition on sharing the affiliated PACs meeting agenda, meeting schedule, or meeting minutes; iii) a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions; iv) a prohibition on directly providing or coordinating information about prior negotiated municipal securities businesses, solicited municipal securities business, and planned solicitations of municipal securities business; and v) other such information barriers as the firms deems appropriate to monitor conflicting interest and prevent abuses effectively.

[15] *See* Rule G-37 Interpretive Letter – Supervisory procedures relating to indirect contributions; conference accounts and 527 organizations (December 21, 2006).

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(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its April 29-30, 2010 meeting. Questions concerning this filing may be directed to Ernesto Lanza, General Counsel or Leslie Carey, Associate General Counsel, at (703) 797-6600.

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

(a) Under Rule G-37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees ("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs")[1] may result in prohibitions on dealers from engaging in municipal securities business[2] with such issuers for a period of two years from the date of any triggering contributions. Rule G-37 also requires dealers to record and disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.[3]

Due to changes in the financial markets since the adoption of Rule G-37, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding

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1 The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24 – Dealer Controlled PAC).

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

3 Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance 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 the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs.

The proposed rule change sets out factors that may result in an affiliated PAC being viewed as controlled by a dealer or an MFP of a dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G-37. The proposed rule change would: i) provide guidance on when a dealer's affiliated PAC might be viewed as controlled by the dealer for purposes of Rule G-37; and ii) ensure that the industry is cognizant of prior MSRB guidance concerning indirect contributions under the rule.

The proposed rule change notes that, when evaluating whether contributions made by affiliated PACs may be subject to the provisions of Rule G-37, dealers should first determine whether such affiliated PAC would be viewed as a dealer-controlled PAC. If an affiliated PAC is determined to be a dealer-controlled PAC, then its contributions to issuer officials would subject the dealer to the ban on municipal securities business and its contributions to issuer officials, state or local political parties, and bond ballot campaigns would be subject to disclosure under Rule G-37. Even if the affiliated PAC is determined not to be a dealer-controlled PAC, the dealer still must consider whether payments made by the dealer or its MFPs to such affiliated PAC could ultimately be viewed as an indirect contribution under Rule G-37(d) if, for example, the affiliated PAC is being used as a conduit for making a contribution to an issuer official.

Indicators of Control by Dealers and MFPs

Soon after adoption of Rule G-37, the MSRB stated that each dealer must determine whether a PAC is dealer controlled, with any PAC of a non-bank dealer assumed to be a dealer-controlled PAC.[4] The MSRB has also stated that the determination of whether a PAC of a bank dealer[5] is a dealer-controlled PAC would depend upon whether the bank dealer or anyone from the bank dealer department has the ability to direct or cause the direction of the management or

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4 *See* Rule G-37 Question & Answer No. IV. 24 (May 24, 1994).

5 MSRB Rule D-8 defines a bank dealer as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.

the policies of the PAC.[6] Such ability to direct or cause the direction of the management or the policies of a PAC also would be indicative of control of such PAC by a non-bank dealer or any of its MFPs, although it would not be the exclusive indicator of such control. While this guidance establishes basic principles with regard to making a determination of control, it does not set out an exhaustive list of circumstances under which a PAC may or may not be viewed as dealer or MFP controlled. The specific facts and circumstances regarding the creation, management, operation and control of a particular PAC must be considered in making a determination of control with respect to such PAC.

Creation of PAC. The proposed rule change provides that, in general, a dealer or MFP involved in the creation of a PAC would continue to be viewed as controlling such PAC unless and until such dealer or MFP becomes wholly disassociated in any direct or indirect manner with the PAC. Thus, any PAC created by a dealer, acting either in a sole capacity or together with other entities or individuals, would be presumed to be a dealer-controlled PAC. This presumption continues at least as long as the dealer or any MFP of the dealer retains any formal or informal role in connection with such PAC, regardless of whether such dealer or MFP has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any non-MFP associated person of the dealer (either an individual, whether or not an MFP, or an affiliated company directly or indirectly controlling, controlled by or under common control with the dealer) has the ability to direct or cause the direction of the management or policies of the PAC. In effect, a dealer could not attempt to treat a PAC it created and then spun off to the control of an affiliated company as not being a dealer-controlled PAC. However, depending on the totality of the facts and circumstances, a PAC originally created by a dealer in which the dealer or its MFPs no longer retain any role, and with respect to which any other affiliates retain only very limited non-control roles, could be viewed as no longer controlled by the dealer.

Similarly, a PAC created by any person associated with the dealer at the time the PAC was created, acting either in a sole capacity or together with other entities or individuals, would be presumed to be controlled by such person under the proposed rule change. Such presumption continues at least for so long as such person retains any formal or informal role in connection with such PAC, regardless of whether any such person has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any other person associated with the same dealer as the creator of the PAC has the ability to direct or cause the direction of the management or policies of the PAC. Although such PAC may not be viewed as subject to Rule G-37 as an MFP-controlled PAC when originally created if such person was not then an MFP, if the person creating the PAC, or any other associated person with the ability to direct or cause the direction of the management or policies

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6 *See* Rule G-37 Question & Answer No. IV. 24 (May 24, 1994).

of such PAC, is or later becomes an MFP, such PAC would be deemed an MFP-controlled PAC.[7]

Management, Funding and Control of PAC. Beyond the role of the dealer, MFP or other person in creating a PAC and maintaining an ongoing association with such PAC, the proposed rule change provides that the ability to direct or cause the direction of the management or the policies of a PAC is also important. Strong indicators of management and control are not mitigated by the fact that such dealer, MFP or other person does not have exclusive, predominant or "majority" control of the PAC, its management, its policies, or its decisions with regard to making contributions. For example, the fact that a dealer or MFP may only have a single vote on a governing board or other decision-making or advisory board or committee of a PAC, and therefore does not have sole power to cause the PAC to take any action, would not obviate the status of such dealer or MFP as having control of the PAC, so long as the dealer or MFP has the ability, alone or in conjunction with other similarly empowered entities or individuals, to direct or cause the direction of the management or the policies of the PAC. In essence, it is possible for a single PAC to be viewed as controlled by multiple different dealers if the control of such PAC is shared among such dealers, although the presumption of control may be rebutted as described below.

The level of funding provided by dealers and their MFPs to a PAC may also be indicative of control pursuant to the proposed rule change. A PAC that receives a majority of its funding from a single dealer (including the collective contributions of its MFPs and employees) or a single MFP is conclusively presumed to be controlled by such dealer or MFP, regardless of the lack of any of the other indicia of control described in this notice. Another important factor is the size or frequency of contributions by a dealer or MFP,[8] viewed in light of the size and frequency of contributions made by other contributors not affiliated in any way with such dealer or MFP. For example, a limited number of small contributions freely made by employees of a dealer to an affiliated PAC (*i.e.*, not directed by the dealer and not part of an automated or otherwise dealer-organized program of contributions) would not, by itself, automatically raise a presumption of dealer control so long as the collective contributions by the dealer or its employees is not significant as compared to the total funding of the affiliated PAC, subject to consideration of the other relevant facts and circumstances. In addition, contributions made by a

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[7] However, a PAC created by an individual acting in his or her formal capacity as an officer, employee, director or other representative of a dealer, regardless of whether such individual is an MFP, would be deemed a dealer-controlled PAC rather than a PAC controlled by the individual.

[8] A dealer or an MFP may make sufficiently large or frequent contributions to a PAC so as to obtain effective control over the PAC, depending on the totality of facts and circumstances.

dealer or MFP to an affiliated PAC could raise a stronger inference of *de facto* dealer or MFP control than when such contributions were made to non-affiliated PACs.

However, even where a dealer or MFP is not viewed as controlling a PAC under the principles described above, the proposed rule change cautions dealers to remain mindful of the potential for leveraging the contribution activities of affiliated PACs in soliciting municipal securities business in a way that could raise a presumption of dealer or MFP control. For example, an MFP's references to the contributions made by an affiliated PAC during solicitations of municipal securities business could, depending on the facts and circumstances, serve as evidence of coordination of such PAC's activities with the dealer or MFP that could, together with other facts, be indicative of direct or indirect control of the PAC by such dealer or MFP. Such control could be found even in circumstances where the dealer or its MFPs have not made contributions to the affiliated PAC.[9]

Of course, the presumptions described above may be rebutted, depending upon the totality of facts and circumstances. The proposed rule change notes considerations that may serve to rebut such presumptions, which may include whether the dealer or person creating the PAC: (i) participates with a broad-based group of other entities and/or individuals in creating the PAC, (ii) at no time undertakes any direct or indirect role (and, in the case of a dealer, no person associated with the dealer undertakes any direct or indirect role) in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC, and/or (iii) provides funding for such PAC (and, in the case of a dealer, its associated persons collectively provide funding for such PAC) that is not substantially greater than the typical funding levels of other participants in the PAC who do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC.

Indirect Contributions Through Bank PACs or Other Affiliated PACs

The proposed rule change reminds dealers that, if an affiliated PAC is determined not to be a dealer-controlled PAC, a dealer must still consider whether payments made by the dealer or its MFPs to such affiliated PAC could be viewed as an indirect contribution that would become subject to Rule G-37 pursuant to section (d) thereof. The proposed rule change reviews prior extensive guidance on such indirect contributions, noting that the MSRB had stated in 1996 that, depending on the facts and circumstances, contributions to a non-dealer associated PAC that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would contributions made directly to the issuer official.[10] The MSRB also noted that dealers should make inquiries of a non-dealer

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9 *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005) for a discussion of potential indirect contributions through affiliated PACs.

10 *See* Rule G-37 Question & Answer No. III.4 (August 6, 1996).

(continued . . .)

associated PAC that is soliciting contributions in order to ensure that contributions to such a PAC would not be treated as an indirect contribution.[11]

The proposed rule change also notes that the MSRB has previously provided guidance in 2005 with regard to supervisory procedures[12] that dealers should have in place in connection with payments to a non-dealer associated PAC or a political party to avoid indirect rule violations of Rule G-37(d). In such guidance, the MSRB stated that, in order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[13] Among other things, dealers might seek to establish procedures requiring that, prior to the making of any contribution to a PAC, the dealer undertake certain due diligence inquiries regarding the intended use of such contributions, the motive for making the contribution and whether the contribution was solicited. Further, in order to ensure compliance with Rule G-37(d), dealers could consider establishing certain information barriers between any affiliated PACs and the dealer and its MFPs.[14] The proposed rule change notes that dealers that have established such information barriers should review their adequacy to ensure that the affiliated entities' contributions, payments or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to the dealers and the MFPs.

(. . . continued)

11 *See* Rule G-37 Question & Answer No. III.5 (August 6, 1996).

12 Rule G-27, on supervision, provides in section (c) that each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules.

13 *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005).

14 The potential information barriers described in the guidance include: i) a prohibition on the dealer or MFP from recommending, nominating, appointing or approving the management of affiliated PACs; ii) a prohibition on sharing the affiliated PACs meeting agenda, meeting schedule, or meeting minutes; iii) a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions; iv) a prohibition on directly providing or coordinating information about prior negotiated municipal securities businesses, solicited municipal securities business, and planned solicitations of municipal securities business; and v) other such information barriers as the firms deems appropriate to effectively monitor conflicting interest and prevent abuses.

The MSRB subsequently noted that the 2005 guidance did not establish an obligation to put in place the specific procedures and information barriers described in the guidance so long as the dealer in fact has and enforces other written supervisory procedures reasonably designed to ensure that the conduct of the dealer and its MFPs are in compliance with Rule G-37(d).[15] The proposed rule change provides the example that, when information regarding past or planned contributions of an affiliated PAC is or may be available to or known by the dealer or its MFPs, the dealer might establish and enforce written supervisory procedures that prohibit the dealer or MFP from providing information to issuer personnel regarding past or anticipated affiliated PAC contributions.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

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

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The MSRB also believes that the proposed rule change will facilitate dealer compliance with Rule G-37 and Rule G-27, on supervision.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all brokers, dealers and municipal securities dealers.

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

Written comments were neither solicited nor received.

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15 *See* Rule G-37 Interpretive Letter – Supervisory procedures relating to indirect contributions; conference accounts and 527 organizations (December 21, 2006).

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

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

Not applicable.

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

Not applicable.

9. Exhibits

1. Federal Register Notice.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2010-07)

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 25, 2010, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB has filed with the Commission a proposed rule change which consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business (referred to hereafter as "proposed rule change"). The MSRB has requested an effective date for the proposed rule change of sixty (60) days after Commission approval of the proposed rule change.

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

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's Web site at www.msrb.org/msrb1/sec.asp, at the MSRB's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The proposed rule change consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business.[3] Under Rule G-37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees

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[3] Rule G-37 defines municipal securities business as: (i) the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs")[4] may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.[5]

Due to changes in the financial markets since the adoption of Rule G-37 and recent market turmoil, many dealers have become affiliated with a broad range of other

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[4] The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24 – Dealer Controlled PAC).

[5] Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance 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 the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs.

The proposed rule change sets out factors that may result in an affiliated PAC being viewed as controlled by a dealer or an MFP of a dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G-37. The proposed rule change would: i) provide guidance on when a dealer's affiliated PAC might be viewed as controlled by the dealer for purposes of Rule G-37; and ii) ensure that the industry is cognizant of prior MSRB guidance concerning indirect contributions under the rule. The proposed rule change notes that, when evaluating whether contributions made by affiliated PACs may be subject to the provisions of Rule G-37, dealers should first determine whether such affiliated PAC would be viewed as a dealer-controlled PAC. If an affiliated PAC is determined to be a dealer-controlled PAC, then its contributions to issuer officials would

subject the dealer to the ban on municipal securities business and its contributions to issuer officials, state or local political parties, and bond ballot campaigns would be subject to disclosure under Rule G-37. Even if the affiliated PAC is determined not to be a dealer-controlled PAC, the dealer still must consider whether payments made by the dealer or its MFPs to such affiliated PAC could ultimately be viewed as an indirect contribution under Rule G-37(d) if, for example, the affiliated PAC is being used as a conduit for making a contribution to an issuer official.

Indicators of Control by Dealers and MFPs

Soon after adoption of Rule G-37, the MSRB stated that each dealer must determine whether a PAC is dealer controlled, with any PAC of a non-bank dealer assumed to be a dealer-controlled PAC.[6] The MSRB has also stated that the determination of whether a PAC of a bank dealer[7] is a dealer-controlled PAC would depend upon whether the bank dealer or anyone from the bank dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.[8] Such ability to direct or cause the direction of the management or the policies of a PAC also would be indicative of control of such PAC by a non-bank dealer or any of its MFPs, although it would not be the exclusive indicator of such control. While this guidance establishes basic principles with regard to making a determination of control, it does not

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6 *See* Rule G-37 Question & Answer No. IV.24 (May 24, 1994).

7 MSRB Rule D-8 defines a bank dealer as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.

8 *See* Rule G-37 Question & Answer No. IV. 24 (May 24, 1994).

set out an exhaustive list of circumstances under which a PAC may or may not be viewed as dealer or MFP controlled. The specific facts and circumstances regarding the creation, management, operation and control of a particular PAC must be considered in making a determination of control with respect to such PAC.

Creation of PAC. The proposed rule change provides that, in general, a dealer or MFP involved in the creation of a PAC would continue to be viewed as controlling such PAC unless and until such dealer or MFP becomes wholly disassociated in any direct or indirect manner with the PAC. Thus, any PAC created by a dealer, acting either in a sole capacity or together with other entities or individuals, would be presumed to be a dealer-controlled PAC. This presumption continues at least as long as the dealer or any MFP of the dealer retains any formal or informal role in connection with such PAC, regardless of whether such dealer or MFP has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any non-MFP associated person of the dealer (either an individual, whether or not an MFP, or an affiliated company directly or indirectly controlling, controlled by or under common control with the dealer) has the ability to direct or cause the direction of the management or policies of the PAC. In effect, a dealer could not attempt to treat a PAC it created and then spun off to the control of an affiliated company as not being a dealer-controlled PAC. However, depending on the totality of the facts and circumstances, a PAC originally created by a dealer in which the dealer or its MFPs no longer retain any role, and with respect to which any other affiliates retain only very limited non-control roles, could be viewed as no longer controlled by the dealer.

Similarly, a PAC created by any person associated with the dealer at the time the PAC was created, acting either in a sole capacity or together with other entities or individuals, would be presumed to be controlled by such person under the proposed rule change. Such presumption continues at least for so long as such person retains any formal or informal role in connection with such PAC, regardless of whether any such person has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any other person associated with the same dealer as the creator of the PAC has the ability to direct or cause the direction of the management or policies of the PAC. Although such PAC may not be viewed as subject to Rule G-37 as an MFP-controlled PAC when originally created if such person was not then an MFP, if the person creating the PAC, or any other associated person with the ability to direct or cause the direction of the management or policies of such PAC, is or later becomes an MFP, such PAC would be deemed an MFP-controlled PAC.[9]

Management, Funding and Control of PAC. Beyond the role of the dealer, MFP or other person in creating a PAC and maintaining an ongoing association with such PAC, the proposed rule change provides that the ability to direct or cause the direction of the management or the policies of a PAC is also important. Strong indicators of management and control are not mitigated by the fact that such dealer, MFP or other

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[9] However, a PAC created by an individual acting in his or her formal capacity as an officer, employee, director or other representative of a dealer, regardless of whether such individual is an MFP, would be deemed a dealer-controlled PAC rather than a PAC controlled by the individual.

person does not have exclusive, predominant or "majority" control of the PAC, its management, its policies, or its decisions with regard to making contributions. For example, the fact that a dealer or MFP may only have a single vote on a governing board or other decision-making or advisory board or committee of a PAC, and therefore does not have sole power to cause the PAC to take any action, would not obviate the status of such dealer or MFP as having control of the PAC, so long as the dealer or MFP has the ability, alone or in conjunction with other similarly empowered entities or individuals, to direct or cause the direction of the management or the policies of the PAC. In essence, it is possible for a single PAC to be viewed as controlled by multiple different dealers if the control of such PAC is shared among such dealers, although the presumption of control may be rebutted as described below.

The level of funding provided by dealers and their MFPs to a PAC may also be indicative of control pursuant to the proposed rule change. A PAC that receives a majority of its funding from a single dealer (including the collective contributions of its MFPs and employees) or a single MFP is conclusively presumed to be controlled by such dealer or MFP, regardless of the lack of any of the other indicia of control described in this notice. Another important factor is the size or frequency of contributions by a dealer or MFP,[10] viewed in light of the size and frequency of contributions made by other contributors not affiliated in any way with such dealer or MFP. For example, a limited number of small contributions freely made by employees of a dealer to an affiliated PAC

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[10] A dealer or an MFP may make sufficiently large or frequent contributions to a PAC so as to obtain effective control over the PAC, depending on the totality of facts and circumstances.

(*i.e.*, not directed by the dealer and not part of an automated or otherwise dealer-organized program of contributions) would not, by itself, automatically raise a presumption of dealer control so long as the collective contributions by the dealer or its employees is not significant as compared to the total funding of the affiliated PAC, subject to consideration of the other relevant facts and circumstances. In addition, contributions made by a dealer or MFP to an affiliated PAC could raise a stronger inference of *de facto* dealer or MFP control than when such contributions were made to non-affiliated PACs.

However, even where a dealer or MFP is not viewed as controlling a PAC under the principles described above, the proposed rule change cautions dealers to remain mindful of the potential for leveraging the contribution activities of affiliated PACs in soliciting municipal securities business in a way that could raise a presumption of dealer or MFP control. For example, an MFP's references to the contributions made by an affiliated PAC during solicitations of municipal securities business could, depending on the facts and circumstances, serve as evidence of coordination of such PAC's activities with the dealer or MFP that could, together with other facts, be indicative of direct or indirect control of the PAC by such dealer or MFP. Such control could be found even in circumstances where the dealer or its MFPs have not made contributions to the affiliated PAC.[11]

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[11] *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005) for a discussion of potential indirect contributions through affiliated PACs.

Of course, the presumptions described above may be rebutted, depending upon the totality of facts and circumstances. The proposed rule change notes considerations that may serve to rebut such presumptions, which may include whether the dealer or person creating the PAC: (i) participates with a broad-based group of other entities and/or individuals in creating the PAC, (ii) at no time undertakes any direct or indirect role (and, in the case of a dealer, no person associated with the dealer undertakes any direct or indirect role) in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC, and/or (iii) provides funding for such PAC (and, in the case of a dealer, its associated persons collectively provide funding for such PAC) that is not substantially greater than the typical funding levels of other participants in the PAC who do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC.

Indirect Contributions Through Bank PACs or Other Affiliated PACs

The proposed rule change reminds dealers that, if an affiliated PAC is determined not to be a dealer-controlled PAC, a dealer must still consider whether payments made by the dealer or its MFPs to such affiliated PAC could be viewed as an indirect contribution that would become subject to Rule G-37 pursuant to section (d) thereof. The proposed rule change reviews prior extensive guidance on such indirect contributions, noting that the MSRB had stated in 1996 that, depending on the facts and circumstances, contributions to a non-dealer associated PAC that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on

municipal securities business as would contributions made directly to the issuer official.[12] The MSRB also noted that dealers should make inquiries of a non-dealer associated PAC that is soliciting contributions in order to ensure that contributions to such a PAC would not be treated as an indirect contribution.[13]

The proposed rule change also notes that the MSRB has previously provided guidance in 2005 with regard to supervisory procedures[14] that dealers should have in place in connection with payments to a non-dealer associated PAC or a political party to avoid indirect rule violations of Rule G-37(d). In such guidance, the MSRB stated that in order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[15] Among other things, dealers might seek to establish procedures requiring that, prior to the making of any contribution to a PAC, the dealer undertake certain due diligence inquiries regarding the intended use of such contributions, the motive for making the contribution and whether the contribution was solicited. Further, in order to ensure compliance with Rule G-37(d), dealers could

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12 *See* Rule G-37 Question & Answer No. III.4 (August 6, 1996).

13 *See* Rule G-37 Question & Answer No. III.5 (August 6, 1996).

14 Rule G-27, on supervision, provides in section (c) that each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules.

15 *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005).

consider establishing certain information barriers between any affiliated PACs and the dealer and its MFPs.[16] The proposed rule change notes that dealers that have established such information barriers should review their adequacy to ensure that the affiliated entities' contributions, payments or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to the dealers and the MFPs.

The MSRB subsequently noted that the 2005 guidance did not establish an obligation to put in place the specific procedures and information barriers described in the guidance so long as the dealer in fact has and enforces other written supervisory procedures reasonably designed to ensure that the conduct of the dealer and its MFPs are in compliance with Rule G-37(d).[17] The proposed rule change provides the example that, when information regarding past or planned contributions of an affiliated PAC is or may be available to or known by the dealer or its MFPs, the dealer might establish and enforce written supervisory procedures that prohibit the dealer or MFP from providing information to issuer personnel regarding past or anticipated affiliated PAC contributions.

2. Statutory Basis

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16 The potential information barriers described in the guidance include: i) a prohibition on the dealer or MFP from recommending, nominating, appointing or approving the management of affiliated PACs; ii) a prohibition on sharing the affiliated PACs meeting agenda, meeting schedule, or meeting minutes; iii) a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions; iv) a prohibition on directly providing or coordinating information about prior negotiated municipal securities businesses, solicited municipal securities business, and planned solicitations of municipal securities business; and v) other such information barriers as the firms deems appropriate to effectively monitor conflicting interest and prevent abuses.

17 *See* Rule G-37 Interpretive Letter – Supervisory procedures relating to indirect contributions; conference accounts and 527 organizations (December 21, 2006).

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

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

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The MSRB also believes that the proposed rule change will facilitate dealer compliance with Rule G-37 and Rule G-27, on supervision.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all brokers, dealers and municipal securities dealers.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of sixty (60) days after Commission approval of the proposed rule change.

.IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2010-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2010-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy
Secretary

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[18] 17 CFR 200.30-3(a)(12).