

**Week of December 15, 2003—Tentative**

There are no meetings scheduled for the Week of December 15, 2003.

**Week of December 22, 2003—Tentative**

There are no meetings scheduled for the Week of December 22, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: R. Michelle Schroll, (301) 415-1662.

**SUPPLEMENTARY INFORMATION:** By a vote of 3-0 on November 13, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules "Affirmation of (1) Final Rule Revising 10 CFR part 2—Rules of Practice; (2) Sequoyah Fuels Corp. (Gore, Oklahoma Site); Answer to Presiding Officer's Certified Question Regarding Classification of Waste as AEA § 11e(2) Byproduct Material; and (3) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI" be held on November 13, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415-1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: November 13, 2003.

**R. Michelle Schroll,**

*Information Management Specialist, Office of the Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48752; File No. SR-MSRB-2003-08]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business**

November 6, 2003.

On October 30, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2003-08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretive guidance concerning rule G-37, on political contributions and prohibitions on municipal securities business. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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 is filing herewith a proposed rule change consisting of technical revisions to previously adopted interpretations of rule G-37 (hereafter referred to as "the proposed rule change"). The text of the proposed rule change below. Additions are italicized; deletions are bracketed.

\* \* \* \* \*

**Rule G-37 Qs & As****I. Persons/Entities Subject to the Rule****I.1**

Q: To whom does [r]Rule G-37 apply?

A: In general, [r]Rule G-37 applies to brokers, dealers and municipal securities dealers (collectively referred

to as dealers), municipal finance professionals, and PACs controlled by the dealer or any municipal finance professional. In addition, the recordkeeping and disclosure provisions apply to *non-MFP* executive officers of the dealer.

(May 24, 1994)

**II. Prohibition on Engaging in Municipal Securities Business (Rule G-37(b))****II.1**

Q: What actions would cause a dealer to be prohibited from engaging in municipal securities business with an issuer?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer, (ii) any municipal finance professional associated with such dealer; or (iii) any PAC controlled by the dealer or any municipal finance professional.

(May 24, 1994)

**II.2**

Q: Is there an exception to this prohibition on engaging in municipal securities business?

A: There is one exception to [r]Rule G-37(b). The prohibition does not apply if the only contributions to officials of issuers are made by municipal finance professionals entitled to vote for such officials, and provided such contributions, in total, are not in excess of \$250 by each such municipal finance professional to each official of such issuer, per election.

(May 24, 1994)

**II.3**

Q: What is the municipal securities business that a dealer would be banned from engaging in with an issuer if certain political contributions are made to officials of such issuers?

A: The term "municipal securities business" is defined in [r]Rule G-37(g)(vii) to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors and consultants, placement agents, and negotiated remarketing agents. The rule does not prohibit a dealer from engaging in competitive underwritings or competitive remarketing services for the issuer.

(May 24, 1994)

**II.4**

Q: If a[n] *non-MFP* executive officer makes a contribution to an official of an issuer, is the dealer prohibited from

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

engaging in municipal securities business with that issuer?

A: No. The prohibition section applies only to contributions made by the dealer, its municipal finance professionals, or any PAC controlled by the dealer or any of its municipal finance professionals. The definition of *non-MFP* executive officer does not include any municipal finance professional. However, contributions by *non-MFP* executive officers are subject to the reporting/disclosure provisions of the rule. In addition, pursuant to section (d), dealers are prohibited from using *non-MFP* executive officers (as well as any other person or entity) as a conduit for making contributions to officials of issuers.

(May 24, 1994)

## II.5

Q: Would a dealer be prohibited from engaging in municipal securities business with a state agency, whose board members are appointed by the governor, if the dealer makes contributions to the governor?

A: Yes, the definition of "official of an issuer" in Rule G-37(g)(vi) includes any person who was, at the time of the contribution, an incumbent, candidate or successful candidate for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer. [The Board intended to prohibit a dealer from engaging in municipal securities business with this state agency in these circumstances. The Board recently filed with the SEC an amendment to rule G-37 to clarify the definition of "official of an issuer." See the rule filing, SR-MSRB-94-5, for more information about this amendment.]

(May 24, 1994)

## II.6

Q: May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

A: Yes, under certain conditions. The *de minimis* exception allows a municipal finance professional to contribute up to \$250 per candidate per election if the municipal finance professional is entitled to vote for that issuer official. The *de minimis* exception is keyed to an election cycle;

therefore, if a municipal finance professional contributed \$250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

(September 9, 1997)

## II.7

Q: Are any payments made to issuer officials, other than political contributions, covered by the rule?

A: No. However, any other payments may be subject to [r]Rule G-20 on gifts and gratuities.

(May 24, 1994)

## Primary, State Caucus or Convention

### II.8

Q: If an issuer official is involved in a primary election prior to the general election, may a municipal finance professional who is entitled to vote for such official contribute \$250 to the issuer official's primary as well as general election?

A: Yes, the municipal finance professional could contribute up to \$500 to each such official (*i.e.*, \$250 per election).

(May 24, 1994)

### II.9

Q: If the locality in which the incumbent or candidate is seeking election as an issuer official holds a convention or caucus (instead of a primary election) prior to the general election, may a municipal finance professional entitled to vote in that locality contribute \$250 to the incumbent or candidate's convention or caucus election campaign, as well as \$250 to the incumbent or candidate's general election, without causing a ban on municipal securities business with the issuer?

A: Yes, if the issuer official has been qualified to be considered at the state caucus or convention.

(June 15, 1995)

## MFP as Incumbent or Candidate

### II.10

Q: If a municipal finance professional also is an incumbent or candidate for

political office in a municipality in which the municipal finance professional's employer (*i.e.*, the dealer) conducts municipal securities business, must the dealer terminate the municipal finance professional or are there any restrictions on the kind of business a dealer can engage in with that issuer?

A: No. However, the dealer, any municipal finance professional and any PAC controlled by the dealer or municipal finance professional must ensure that the dealer does not engage in municipal securities business with the issuer if contributions (other than the *de minimis* contributions allowed under section (b)) are made to an official of the issuer. The municipal finance professional who is an incumbent or candidate for office is not limited to contributing the *de minimis* amount to his or her own campaign in such instances.

(May 24, 1994)

## Attendance at Fund-Raising Dinner

### II.11

Q: May a dealer continue to engage in municipal securities business with an issuer if a municipal finance professional pays for and attends a fund-raising dinner for a candidate who is seeking election to a position as an official of such issuer?

A: A municipal finance professional who contributes funds in this instance would subject the dealer to a prohibition on municipal securities business with the issuer unless the municipal finance professional is entitled to vote for such candidate and any contributions do not exceed \$250 to such candidate per election. In addition, any municipal finance professional who attends the dinner for the purpose of soliciting contributions by others for the issuer official would violate [r]Rule G-37's prohibition on soliciting contributions. *See also Rule G-37(c)*.

(May 24, 1994)

## Two-Year Look Back

### II.12

Q: A municipal finance professional (*i.e.*, a municipal investment banker subject to the two year look back) was associated with dealer X at the time he made a contribution which resulted in the dealer being prohibited from engaging in municipal securities business with the issuer. Then, less than two years after making the contribution, the municipal finance professional becomes associated with dealer Y. Is dealer Y also subject to the prohibition on business?

A: Both dealers are subject to the prohibition for two years from the date

the municipal finance professional made the contribution. Of course, dealer Y's prohibition on business only begins when the municipal finance professional becomes associated with that dealer.

(May 24, 1994)

#### II.13

**Q:** Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

**A:** Yes. Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years. (May 24, 1994)

#### II.14

**Q:** If a dealer hires an individual as a retail sales person, would the contributions made by that person prior to being hired subject the dealer to the two-year prohibition on municipal securities business?

**A:** The rule's two-year prohibition is triggered by contributions by dealers, municipal finance professionals, and political action committees controlled by a dealer or a municipal finance professional. If a retail sales person is not a municipal finance professional and does not become a municipal finance professional within two years after making a contribution to an issuer official, then such contributions will not trigger the ban on business. However, if the retail sales person is, or within two years becomes, a municipal finance professional (*e.g., by solicitation of officials of an issuer*), then contributions made by that person will subject the hiring dealer to the two-year ban on business. [For additional guidance in this area, please refer to Q's & A's numbered 14 through 16 published in the June 1994 issue of *MSRB Reports*.] *A retail sales person would not be considered to be a municipal finance*

*professional solely because of his or her municipal securities retail sales activities. (See Rule G-37(g)(iv)).* (December 7, 1994)

#### II.15

**Q:** A person is associated with a dealer in a non-municipal finance professional capacity, and makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the dealer be prohibited from engaging in a negotiated underwriting with that issuer?

**A:** Yes, the dealer is subject to the prohibition for two years from the date the contribution was made.

(May 24, 1994)

#### II.16

**Q:** A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

**A:** Yes. Rule G-37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer. The Board notes, however, that [r]ule G-37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G-37. *Thus, the dealer may wish to seek an exemption from the ban on business pursuant to Rule G-37(i) from its appropriate regulatory authority.* (June 29, 1998)

#### Refund of Inadvertent Contribution

#### II.17

**Q:** A disgruntled municipal finance professional made a contribution purposely to subject the dealer to the two-year prohibition on business. When

the contribution is discovered by the dealer, a refund of the contribution is requested and obtained. Is the dealer still banned from engaging in business with that issuer? In addition, does the contribution have to be disclosed on Form G-37?

**A:** Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer by any municipal finance professional associated with such dealer if the contribution does not meet the *de minimis* exemption. Section (i) of the rule provides a procedure whereby dealers may seek relief from the appropriate enforcement agency of the rule G-37 prohibition on business [ , in limited circumstances]. In determining whether to grant such an exemption, one of the factors the enforcement agency will consider is whether the dealer has taken all available steps to obtain a return of the contribution. Even if a refund of the contribution has been obtained, dealers are required to seek an exemption from the ban on business. In addition, dealers also must disclose the contribution on Form G-37. Dealers may wish to indicate on the form (and in their own records) that a refund of the contribution was obtained. *See Rule G-37(i).*

(August 18, 1994)

#### Volunteer Work

#### II.18

**Q:** Is a municipal finance professional prohibited from performing volunteer work on an issuer official's behalf?

**A:** Rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work. However, soliciting and bundling of contributions would invoke application of the rule. In addition, if the municipal finance professional uses the dealer's resources (*e.g., a political position paper prepared by dealer personnel*) or incurs expenses in the conduct of such volunteer work (*e.g., hosting a reception*), then the value of such resources or expenses would constitute a contribution. Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g., cab fares and personal meals*), would not constitute a contribution.

(May 24, 1994)

**Dealer Resources**

## II.19

Q: If an employee of a dealer is donating his or her time to an issuer official's campaign, does the dealer have to disclose this as a contribution to such official? In addition, would the fact that the employee is taking a leave of absence from the dealer cause a different result?

A: An employee of a dealer generally can donate his or her time to an issuer official's campaign without this being viewed as a contribution by the dealer to the official, as long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (e.g., an unpaid leave of absence). (August 18, 1994)

**Making Contributions to Issuer Officials on Behalf of Other Persons**

## II.20

Q: A municipal finance professional signs a check drawn on a joint account, which is owned by the municipal finance professional and another person, and submits it to an issuer official as a contribution along with a writing which states that the contribution is being made solely by the other holder of the joint account. Would any portion of this contribution be attributable to the municipal finance professional under [r]Rule G-37?

A: If a municipal finance professional signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, then the municipal finance professional is deemed to have made the full contribution, regardless of any writing accompanying the check that provides or directs otherwise. Moreover, if this amount exceeds, or does not qualify for, the *de minimis* exception, then by making such a contribution the municipal finance professional will trigger the rule's ban on business thereby prohibiting his dealer/employer from engaging in municipal securities business with the particular issuer for two years.

(February 16, 1996)

## II.21

Q: If a municipal finance professional and another person (e.g., her spouse) both sign a check drawn on their joint account and submit the check to an issuer official as a contribution, would the contribution amount be attributable equally between them (i.e., 50% to each person) for purposes of [r]Rule G-37?

A: Yes. If a municipal finance professional and any other person both sign a check drawn on their joint account and submit it to an issuer official as a contribution, then each person is deemed to have made half of the contribution, regardless of any writing accompanying the check that provides or directs otherwise. (February 16, 1996)

**Making Contributions to a Candidate Who Later Loses the Election**

## II.22

Q: If a municipal finance professional made a political contribution which was not subject to the *de minimis* exception to an issuer official candidate who subsequently did not win the election, is the dealer banned from engaging in municipal securities business with that issuer (i.e., the governmental entity)?

A: Yes. Rule G-37 defines the term "official of such issuer" or "official of an issuer" as "any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in subparagraph (A), above." It is clear from the rule that, at the time the contribution is made, if the recipient of that contribution is an "official of an issuer," then the dealer is subject to the two-year ban on business with the issuer, regardless of whether the candidate wins or loses the election. Any other result would mean that municipal finance professionals could make contributions to issuer officials, but the ban on business would not be triggered (if at all) until election results were known. (February 16, 1996)

**III. INDIRECT CONTRIBUTIONS (Rule G-37(d))****Contributions by Spouses and Household Members**

## III.1

Q: Are contributions to issuer officials by municipal finance professionals' spouses and household members covered by the rule?

A: No, unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.

(May 24, 1994)

## III.2

Q: If a municipal finance professional directs a retail sales person (who is not a municipal finance professional) to make a political contribution to an issuer official, would this trigger the rule's two-year prohibition on business with that issuer?

A: Yes. Section (d) of the rule prohibits municipal finance professionals (and dealers) from using any person or means to do, directly or indirectly, any act which would violate the rule. In other words, a municipal finance professional is prohibited from using a sales person (or any other person not otherwise subject to the rule) as a conduit to circumvent the rule. Thus, contributions made, directly or indirectly, by a municipal finance professional (or a dealer) to an issuer official will subject the dealer to the rule's two-year prohibition on municipal securities business with that issuer. In addition to triggering the prohibition, the municipal finance professional in this case has violated section (d) of the rule. (December 7, 1994)

**Political Parties**

## III.3

Q: Are contributions to national, state or local political parties covered by the rule?

A: Any such contributions would not trigger the prohibition on business portion of the rule (section (b)) unless such entities are used as a conduit to indirectly contribute to an issuer official, which is prohibited by section (d) of the rule. However, contributions to state or local political parties must be recorded under [r]Rule G-8(a)(xvi) and disclosed in summary form under [r]Rule G-37(e), except for those contributions which meet the *de minimis* exemption. See also Rule G-37(e). (May 24, 1994)

**Contributions to a Non-Dealer Associated PAC and Payments to a State or Local Political Party**

## III.4

Q: Could contributions to a non-dealer associated PAC or payments to a state or local political party lead to a ban on municipal securities business with an issuer under [r]Rule G-37?

A: Rule G-37(d) prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or municipal finance professional. A

dealer would violate [r]Rule G-37 by doing business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on business. For example, in certain instances, a non-dealer associated PAC or a local political party may be soliciting funds for the purpose of supporting a limited number of issuer officials. Depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

[Q: Does rule G-37 address contributions to non-dealer associated or "special interest" PACs?]

[A: Rule G-37 does not deal directly with contributions to non-dealer associated or "special interest" PACs. Unless the non-dealer associated or "special interest" PAC solicits contributions for the purpose of supporting an issuer official, contributions to these PACs should not result in a ban on business under section (b) of rule G-37. (August 18, 1994)]

### III.5

Q: If a dealer receives a fund raising solicitation from a non-dealer associated PAC or a political party with no indication of how the collected funds will be used, can the dealer make contributions to the non-dealer associated PAC or payments to the political party without causing a ban on municipal securities business?

A: Dealers should inquire of the non-dealer associated PAC or political party how any funds received from the dealer would be used. For example, if the non-dealer associated PAC or political party is soliciting funds for the purpose of supporting a limited number of issuer officials, then, depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official. (August 6, 1996)

### **Making Payments to a National Political Party for Its Non-Federal Account (Rule G-37(e))**

#### III.6

Q: If a national political party accepts payments in which contributors have

designated that their payments be deposited into the account for a state or local political party, must the dealer record such payments and report them on Form G-37?

A: Yes. Rule G-37 requires that dealers record and report payments made to state and local political parties and the ultimate recipient in the above scenario is a state or local political party so designated by the contributor. (February 16, 1996)

### **IV. DEFINITIONS (Rule G-37(g))**

#### **Contribution**

##### IV.1

Q: How is the term "contribution" defined in [r]Rule G-37?

A: The term "contribution" is defined in [r]Rule G-37(g)(i) to mean any gift, subscription, loan, advance, or deposit of money or anything of value made: (i) for the purpose of influencing any election for federal, state or local office; (ii) for payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office. (May 24, 1994)

##### IV.2

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

A: Yes. Rule G-37(g)(i) defines "contribution" as, among other things, any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for federal, state or local office. (June 15, 1995)

##### IV.3

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

A: No. Rule G-37 encompasses, for federal offices, only those contributions to an official of an issuer who is seeking election to a federal office. (May 24, 1994)

##### IV.4

Q: Are contributions to bond election committees supporting ballot measures for bonds and tax levies subject to the requirements of [r]Rule G-37?

A: No. (May 24, 1994)

#### **Charitable Donations**

##### IV.5

Q: Would a charitable donation to an organization made by a dealer at the

request of an issuer official meet the definition of "contribution" in [r]Rule G-37?

A: No. Charitable donations are not considered political contributions for purposes of [r]Rule G-37 and therefore are not covered by the rule. (May 24, 1994)

### **Municipal Finance Professional**

#### IV.6

Q: Who is considered a municipal finance professional?

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

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

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

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

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

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

1. Any associated person primarily engaged in municipal representative activities pursuant to [r]Rule G-3(a)(i) (such activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph),

provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of Rule G-37(g)(iv);

2. Any associated person who solicits "municipal securities business" as defined in [r]Rule G-37 (which includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services);

3. Any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in paragraphs 1 or 2 above;

[3.] 4. Any associated person who is a [Direct] supervisor[s] of the associated persons described in paragraph 3 above, up through and including: [(1)] (i) for dealers that are not bank dealers, the CEO or similarly situated official; and [(2)] (ii) for bank dealers, the officer or officers designated by the bank's board of directors as responsible for the day-to-day conduct of the bank's dealer activities.

[4.] 5. For dealers other than bank dealers: any associated person who is a member of the executive or management committee, or similarly situated officials, if any. For bank dealers: any member of the executive or management committee of the separately identifiable department or division of the bank, as defined in [r]Rule G-1, if any. However, if the only associated persons meeting the definition of municipal finance professional are those described in this paragraph 5, the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person listed by the dealer as a municipal finance professional is deemed to be such for purposes of [r]Rule G-37. [Remember that the prohibition on business applies to contributions made within the previous two years, beginning with contributions made on April 25, 1994.]

(May 24, 1994)

#### IV.7

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

A: No. The definition of municipal finance professional includes, among others, any associated person primarily engaged in municipal representative activities pursuant to [r]Rule G-3(a)(i), but excludes sales activities with natural persons. [These activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other

activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph.]

(May 24, 1994)

#### IV.8

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

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

(May 24, 1994)

#### IV.9

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

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

(May 24, 1994)

#### Solicitation

[Q: Many retail sales persons in larger firms may not be "primarily engaged in" municipal securities representative activities and thus may not fall within that portion of the definition of municipal finance professional. However, if these sales persons solicit municipal securities business, would they be subject to rule G-37?]

[A: Yes. Rule G-37(g)(iv) defines a municipal finance professional to include, among others, any associated person who solicits municipal securities business. If a retail sales person solicits municipal securities business, then that person becomes a municipal finance professional. Any contributions by such persons made to an issuer official may subject the dealer to the two-year prohibition on business with that issuer.

(December 7, 1994)]

#### IV.10

Q: What constitutes "solicitation" of municipal securities business?

A: Solicitation activities may include, but are not limited to, responding to issuer Requests for Proposals, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so.

(December 7, 1994)

#### IV.11

Q: Has a "solicitation" occurred if a retail sales person receives a "finder's fee" for bringing municipal securities business to the dealer?

A: If a retail sales person receives a "finder's fee" for bringing municipal securities business to the dealer, then there should be a presumption that the sales person solicited municipal business from an issuer official. In such situations, the sales person becomes a municipal finance professional and any contributions made by that person to an issuer official may subject the dealer to the two-year prohibition on business with that issuer.

(December 7, 1994)

#### IV.12

Q: Is a "finder's fee" solely cash compensation?

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

(December 7, 1994)

#### IV.13

Q: Any associated person who solicits municipal securities business is deemed a municipal finance professional under [r]Rule G-37. The Board previously noted that "solicitation" may encompass a number of activities, including, for example, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so [(MSRB Reports, Vol. 14, No. 5 (Dec. 1994) at 8)]. If an associated person of a dealer attends a presentation by dealer personnel of public finance capabilities, would this also constitute "solicitation" under [r]Rule G-37?

A: Yes. If an associated person of a dealer attends such a presentation, then

he or she is assumed to have solicited municipal securities business and therefore is deemed a municipal finance professional under [r]Rule G-37.

Accordingly, any contributions given to issuer officials by that person within the last two years could subject the dealer to the rule's two-year prohibition on business with such issuers. [For additional guidance in this area, please refer to Q&A number 4 in the June 1994 issue of *MSRB Reports* (Vol. 14, No. 3), CCH Manual paragraph 3681; and Q&A numbers 1, 2 and 3 in the December 1994 issue of *MSRB Reports* (Vol. 14, No. 5), CCH Manual paragraph 3681.]

(March 22, 1995)

### Supervisors

#### IV.14

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

A: Yes. Rule G-37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (*i.e.*, the branch manager) also is included within the definition of municipal finance professional. [Prior to the most recent revision to this portion of the definition of municipal finance professional (which was approved on March 6, 1995 in Securities Exchange Act Release No. 34-35446), the definition included any "direct supervisor" of any associated person who solicited municipal securities business (or who was primarily engaged in municipal securities representative activities). Under both definitions, [b]Branch managers are included within the definition of municipal finance professional in the circumstances described above. [For additional information in this area, please refer to *MSRB Reports*, Vol. 14, No. 4 (August 1994) at 28-29, CCH Manual paragraph 3681.]

(March 22, 1995)

### Designation Period for Municipal Finance Professionals

#### IV.15

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

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

(August 6, 1996)

#### IV.16

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

A: If a municipal finance professional is transferred to another department within the same firm (such as corporate, equities, etc.) and remains an "associated person" of the dealer, the dealer must continue to designate this person a municipal finance professional for [two] *one* year[s] from the date of the last activity or position which gave rise to this designation and must continue its recordkeeping and reporting obligations under [r]Rules G-37 and G-8. It is incumbent upon each dealer to determine whether the person is an associated person pursuant to Section 3(a)(18) of the Securities Exchange Act of 1934. If so, then in addition to recordkeeping and reporting obligations, dealers should be mindful that any contributions made by this associated person during the [two] *one*-year designation period (other than contributions that qualify for the rule's \$250 *de minimis* exception) will subject the dealer to the rule's ban on municipal securities business for two years from the date of such contribution. Of course, the ban can only be triggered if the person previously was a municipal finance professional.

(August 6, 1996)

#### IV.17

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

A: [As noted above in Q&A number 4, if] *If* a person is no longer a municipal finance professional because he or she has left the dealer's employ, but nevertheless remains an associated person of the dealer, then the dealer must continue to designate this person a municipal finance professional for [two] *one* year[s] from the last activity or position which gave rise to such designation. Moreover, any contributions by this associated person (other than those that qualify for the *de minimis* exception under [r]Rule G-37(b)) will subject the dealer to the rule's ban on municipal securities business for two years from the date of the contribution.

(August 6, 1996)

#### IV.18

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

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

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

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and

(ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to [r]Rule G-1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]Rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Rule G-37(g)(v) defines the term "non-MFP executive officer" as: an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]Rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that, if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers. [emphasis added]

Dealers should first review the activities of their associated persons to determine whether they are municipal finance professionals, and then, once that list of individuals has been established, conduct a review of the remaining associated persons to determine whether they are non-MFP executive officers. Dealers should pay close attention to those associated persons who are soliciting municipal securities business and, thus, will be considered municipal finance professionals. The Board has previously stated that solicitation activities may include, but are not limited to,

responding to issuer Requests for Proposals, making presentations of public finance and/or municipal marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so. [(See "Additional Rule G-37 Questions & Answers," *MSRB Reports*, Vol. 14, No. 5 (December 1994) at 8).]

(September 9, 1997)

#### Non-MFP Executive Officer

##### IV.19

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

A: Pursuant to [r]Rule G-37(g)(v), a[n] non-MFP executive officer is defined as any associated person in charge of a principal business unit, division or function, or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]Rule G-1), but does not include any municipal finance professional.

(May 24, 1994)

##### IV.20

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

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

(August 18, 1994)

#### Official of an Issuer

##### IV.21

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

A: Rule G-37(g)(vi) defines the term "official of an issuer" [as any incumbent, candidate or successful candidate 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. The definition includes any issuer official or candidate (or successful candidate) in a position which has influence over the awarding of municipal securities business.] to mean "any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can

influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer. Thus, contributions to certain state-wide executive or legislative officials would be included within the prohibition on engaging in municipal securities business.

(May 24, 1994)

##### IV.22

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

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

(May 24, 1994)

##### IV.23

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

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



the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may not contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer. (September 9, 1997)

#### Dealer-Controlled PAC

##### IV.24

Q: What is a "dealer-controlled" PAC?

A: Each dealer must determine whether a PAC is dealer controlled. For dealers, other than bank dealers, one may assume that any PAC of the dealer would be considered a dealer-controlled PAC for purposes of [r]Rule G-37. For bank dealers, it will depend upon whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC. (May 24, 1994)

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

##### V.1

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

A: Rule G-37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G-37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate [r]Rule G-37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts

and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted. (March 1, 2000)

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

[Q: Does a dealer have to collect information on political contributions for the two years prior to April 25, 1994]

[A: No. Records do not have to be maintained for contributions made or municipal securities business engaged in prior to April 25, 1994. (May 24, 1994)]

##### VI.1

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

A: Yes. The Board amended [r]Rule G-8 and G-9, on recordkeeping and record retention, respectively, to require each dealer to maintain records of certain information. This recordkeeping is designed to assist dealers in determining whether or not they may engage in business with a particular issuer, as well as to facilitate compliance with, and enforcement of, [r]Rule G-37. (May 24, 1994)

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

[A: No, such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. (May 24, 1994)]

##### VI.2

Q: Rule G-8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term "issuer" includes the issuer of a separate security as defined in SEC Rule 3b-5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of

a separate security is a private corporation, not a government entity. Must we record these "issuers"?

A: No. Such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. Of course, dealers are required to record the governmental issuer in these situations, for both taxable and tax-exempt municipal securities. (December 7, 1994)

##### VI.3

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

A: [Each dealer is required to file two copies of Form G-37 within 30 calendar days after the end of each calendar quarter (*i.e.*, by January 31, April 30, July 31 and October 31). The Board recently filed an amendment to rule G-37 with the SEC to require that the forms be submitted by certified or registered mail or some other equally prompt means that provides a record of sending. *See* the rule filing, SR-MSRB-94-5, for more information about this amendment.] *Dealers are required to submit Form G-37/G-38 to the MSRB by the last day of the month following the end of each calendar quarter. These submission dates correspond to January 31, April 30, July 31 and October 31 of each year. There is no fixed time frame for submission of Form G-37x. However, if a dealer wishes to rely on the Form G-37x exemption from the Form G-37/G-38 submission requirement for a particular calendar quarter, Form G-37x must be submitted by no later than the submission deadline for such quarter.* (May 24, 1994)

##### VI.4

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

A: [Form G-37 must be filed with the Board if, during the reporting period, (i) political contributions were made by those entities and/or persons subject to rule G-37, and/or (ii) the dealer engaged in municipal securities business with an issuer, as defined in rule G-37(g)(vii). Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business. However, the making of contributions and the resulting awarding of municipal securities business may not come within a single reporting period. Thus, it is important that information on political contributions be disclosed even if no municipal securities business was engaged in during the reporting period. So too, it is important to disclose

municipal securities business even if no political contributions were made during the reporting period. However, a dealer is not required to file Form G-37 if no political contributions were made and the dealer did not engage in municipal securities business during the reporting period.] *Form G-37/G-38 must be submitted to the Board for a calendar quarter if ANY one of the following occurred: (i) reportable political contributions or payments to political parties were made during the reporting period, unless the dealer has previously submitted Form G-37x and the submission remains effective; (ii) the dealer engaged in municipal securities business during the reporting period; or (iii) the dealer used consultants during the reporting period (i.e., new or continuing relationship with consultants).*

(May 24, 1994)

#### VI.5

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

A: No. Rule G-37 does not define "municipal securities business" to include selling group member activities. (May 24, 1994)

#### VI.6

Q: Which contributions to officials of issuers and political parties of states and political subdivisions must be disclosed to the Board on Form G-37/G-38?

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

by all municipal finance professionals and *non-MFP* executive officers, however, such records need not reflect those contributions made by any municipal finance professional or *non-MFP* executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the contributions by each such person, in total, are not in excess of \$250 per political party, per year.

(May 24, 1994)]

[Q: The disclosure of the compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business must be included on Form G-37. Does this include disclosure of the compensation arrangements of municipal finance professionals?]

[A: No. The Board recently filed with the SEC an amendment to the rule to clarify this point. See the rule filing, SR-MSRB-94-5, for more information about this provision.

(May 24, 1994)]

#### VI.7

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

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

(May 24, 1994)

#### VI.8

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

A: Yes. *The Forms G-37/G-38 and Forms G-37x submitted to the Board are posted on the Board's Web site for viewing (<http://www.msrb.org>).* In addition, [O]ne copy of each Form G-37 will be maintained at the Board's Public Access Facility in Alexandria, Virginia. These forms will be available to the public for review and photocopying. The Board will charge 20 cents per page plus sales tax, if applicable, for photocopying.

(May 24, 1994)

[Q: Will the Board answer telephone inquiries as to whether a report has been filed?]

[A: Yes. The Board will maintain a database of reports filed by each dealer (as well as any other party voluntarily submitting information on political contributions), so that any member of the public may telephone the Board's offices to inquire whether a certain dealer (or other party) has submitted a report pursuant to rule G-37. In order to further enhance public access to this information, the Board will provide a

list of companies that offer document retrieval and mailing services.

(May 24, 1994)]

#### VI.9

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

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

(February 16, 1996)

#### VI.10

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

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

(September 9, 1997)

\* \* \* \* \*

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

In its filing with the SEC, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section 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

Since the adoption of Rule G-37, on political contributions and prohibitions on municipal securities business, the MSRB has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry in understanding and complying with the provisions of the rule, the MSRB has published a series of interpretive notices that set forth, in Q & A format, general guidance on Rule G-37.

On May 8, 2003, amendments to Rule G-37 became effective concerning revisions to the definition of municipal finance professional and the exemption process.<sup>3</sup> The proposed rule change revises certain of the Rule G-37 Qs & As to reflect the new rule language as contained in the amendments, primarily concerning the definition of municipal finance professional. The proposed rule change also revises certain Rule G-37 Qs & As to reflect subsequent changes to the rule since the time the particular Qs & As were adopted. In addition, the MSRB has been publishing the Rule G-37 Qs & As in chronological order. The proposed rule change rearranges the order of the Qs & As by grouping them by subject matter. This should make their presentation more helpful to users of the Qs & As.

**2. Basis**

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade \* \* \* 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 Act in that it provides guidance to brokers, dealers and municipal securities dealers in complying with existing MSRB rules.

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

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

**C. Self-Regulatory Organization's Statement of 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**

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section

19(b)(3)(A) of the Act,<sup>4</sup> which renders the proposed rule change effective upon receipt of this filing by the Commission.

**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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, 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. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-2003-08 and should be submitted by December 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-28763 Filed 11-17-03; 8:45 am]  
**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3549]**

**State of Delaware; Amendment #2**

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 23, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to November 24, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 2003.

**Herbert L. Mitchell,**  
*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-28713 Filed 11-17-03; 8:45 am]  
**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3557]**

**State of Washington**

As a result of the President's major disaster declaration on November 7, 2003, I find that Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Okanogan, Pierce, San Juan, Skagit, Snohomish, Thurston and Whatcom Counties in the State of Washington constitute a disaster area due to damages caused by severe storms and flooding occurring on October 15 through October 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 6, 2004 and for economic injury until the close of business on August 9, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Douglas, Ferry, Grant, Kittitas, Lewis, Lincoln, Pacific and Yakima in the State of Washington.

*The interest rates are:*

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	5.125
Homeowners without credit available elsewhere .....	2.562
Businesses with credit available elsewhere .....	6.199
Businesses and non-profit organizations without credit available elsewhere .....	3.100
Others (including non-profit organizations) with credit available elsewhere .....	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.100

The number assigned to this disaster for physical damage is 355706 and for economic injury the number is 9X8400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

<sup>3</sup> Release No. 34-47814 (May 8, 2003), 68 FR 25917 (May 14, 2003).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).  
<sup>5</sup> 17 CFR 200.30-3(a)(12).