

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40167; File No. SR-MSRB-98-10]

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

July 2, 1998.

On June 30, 1998, 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-98-10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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)³ 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 Board is filing herewith a proposed rule change consisting of a notice of interpretation, in question-and-answer format, concerning Rule G-37, on political contributions and prohibitions on municipal securities business. The proposed rule change is as follows:

Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

Since May 1994, the Board has provided interpretive guidance on Rule G-37 through the publication of eight Question & Answer ("Q&A") notices.⁴

The Board recently has received a number of questions concerning mergers in the municipal securities industry and the operation of the exemptive provision set forth in section (i) of the rule from market participants and the agencies charged with enforcing the rule. As a result, the Board has determined that it is necessary to provide further guidance to the industry and the applicable enforcement agencies by confirming and elaborating upon guidance provided in prior Q&A notices and in prior communications with the applicable enforcement agencies. Accordingly, the Board is publishing this ninth set of questions and answers.

Questions and Answers Regarding Rule G-37(i)

1. 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 Rule 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 Board believes that it would be appropriate for the NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory

authorities) to grant conditional or unconditional exemptions from bans on municipal securities business arising from such mergers if the NASD or the appropriate regulatory agency determines that, pursuant to Rule G-37(i), the exemption is consistent with the public interest, the protection of investors and the purposes of the rule, as well as any other factors set forth in the rule or any other factors deemed relevant by the NASD or the appropriate regulatory agency.

2. Q: The Board has previously provided two examples in which exemptions from a ban on municipal securities business may be appropriate under Rule G-37(i). Are these the only situations in which the NASD or the appropriate regulatory agency may provide an exemption under Rule G-37(i)?

A: No. The two examples noted in Q&A number 4 (June 15, 1995), MSRB Reports, Vol. 15, No. 2 (July 1995) at 3-4, MSRB Manual (CCH) ¶ 3681, were not meant to be the only instances in which exemptions might appropriately be given. Because of the varying factual situations that arise with each exemptive request, the Board believes that the NASD and the appropriate regulatory agencies should review such other factual situations presented by dealers in exemptive requests pursuant to the requirements in Rule G-37(i) and, based on the facts, either approve or reject the request. Rule G-37(i) allows the NASD and the appropriate regulatory agencies to grant exemptions from the ban on business "conditionally or unconditionally" and, if the NASD or the appropriate regulatory agency believes it would be appropriate to shorten the ban on business or limit its scope, it is authorized to do so as long as the requirements of Rule G-37(i) are met.

3. Q: The Board has previously described three situations which it believes are not sufficient to justify the granting of an exemption from a ban on municipal securities business under Rule G-37(i). Does this mean that the NASD or the appropriate regulatory agency may never provide an exemption under Rule G-37(i) if any of these situations exist?

A: No. The Board's intent in describing these three scenarios in Q&A number 4 (June 15, 1995), MSRB Reports, Vol. 15, No. 2 (July 1995) at 3-4, MSRB Manual (CCH) ¶ 3681, was to note that none of these situations was sufficient, in and of itself, to justify the granting of an exemption from a ban on municipal securities business. However, any such scenario in combination with other facts and circumstances deemed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Rel. No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Rel. No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Rel. No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994); Securities Exchange Act Rel. No. 35544 (March 28, 1995), 60 FR 16896 (April 3,

1995); Securities Exchange Act Rel. No. 35879 (June 21, 1995), 60 FR 33447 (June 28, 1995); Securities Exchange Act Rel. No. 36857 (Feb. 16, 1996), 61 FR 7034 (Feb. 23, 1996); Securities Exchange Act Rel. No. 37675 (Sept. 12, 1996), 61 FR 49368 (Sept. 19, 1996); Securities Exchange Act Rel. No. 39084 (Sept. 16, 1997), 62 FR 49717 (Sept. 23, 1997).

See MSRB Reports, Vol. 14, No. 3 (June 1994) at 11-16; Vol. 14, No. 4 (Aug. 1994) at 27-31; Vol. 14, No. 5 (Dec. 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3-4; Vol. 16, No. 1 (Jan. 1996) at 31; Vol. 16, No. 3 (Sept. 1996) at 35-36; and Vol. 17, No. 3 (Oct. 1997) at 11-12. See also CCH Manual ¶ 3681.

relevant by the NASD or the appropriate regulatory agency (including, but not limited to, the factors set forth in Rule G-37(i)) could, in the judgment of the NASD or the appropriate regulatory agency, be sufficient to justify a conditional or unconditional exemption from the ban.

The Board also notes that none of the three situations previously cited as insufficient to justify an exemption involved a contribution made prior to an individual becoming a municipal finance professional. Thus, for example, where a non-*de minimis* contribution was made by a person who later becomes a municipal finance professional (whether by reason of a merger, as a newly hired associated person, as an existing associated person becoming involved in municipal securities activities, or otherwise), neither the NASD nor any appropriate regulatory agency is constrained from granting a conditional or unconditional exemption if, in its judgment, such exemption is consistent with Rule G-37(i).

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 Board 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 Board 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

On April 7, 1994, the Commission approved Board Rule G-37, on political contributions and prohibitions on municipal securities business.⁵ Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published eight prior notices of interpretation which set forth, in Q&A

format, general guidance on Rule G-37.⁶ In prior filings with the Commission, the Board stated that it will continue to monitor the application of Rule G-37 and, from time to time, will publish additional notices of interpretations, as necessary.⁷ The Board recently has received a number of questions concerning mergers in the municipal securities industry and the operation of the exemption provision set forth in section (i) of the rule from market participants and the agencies charged with enforcing the rule. As a result, the Board has determined that it is necessary to provide further guidance to the industry and the applicable enforcement agencies by confirming and elaborating upon guidance provided in prior Q&A notices and in prior communications with the applicable enforcement agencies. Accordingly, the Board is publishing this ninth set of Q&As.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.⁸

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

The Board 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, because 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

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 and Rule 19b-4(1) thereunder,⁹ which renders the proposed rule change effective upon receipt of this filing by the Commission.

At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, N.W., Washington, D.C. 20549. 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. 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-98-10 and should be submitted by July 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3094]

State of Massachusetts

As a result of the President's major disaster declaration on June 23, 1998, I find that Bristol, Essex, Middlesex, Norfolk, and Suffolk Counties in the State of Massachusetts constitute a disaster area due to damages caused by

⁵ Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

⁶ See *supra* note 3.

⁷ See Securities and Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994) (SR-MSRB-94-06) and Securities and Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994) (SR-MSRB-94-15).

⁸ Section 15(b)(2)(C) states in pertinent part that the rules of the Board "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."

⁹ 17 CFR 240.19b-4(e)(1).

¹⁰ 17 CFR 200.30-3(a)(12).