

dealer, its management or employees. The second example involved a municipal finance professional who was eligible to vote for a particular issuer official and who made a number of small contributions during an election cycle (e.g., over four years) which, when consolidated, amounted to slightly over the \$250 *de minimis* exemption (e.g., \$255).

The Board believes that the following situations are not sufficient to justify the granting of an exemption from a ban on business: (1) A contribution was made by a municipal finance professional which subjected the dealer to the two-year ban on business, but the municipal finance professional was not aware of rule G-37 or any of its particular provisions; (2) the dealer or a municipal finance professional did not know that the recipient of a particular contribution was an "official of an issuer"; and (3) at the time the contribution was made, an associated person did not know that he was a "municipal finance professional" by virtue of his supervisory capacity, by being primarily engaged in municipal securities representative activities, or by virtue of any of the other activities listed in the rule's definition of municipal finance professional.

The Board is strongly of the view that exemptions should be granted only in limited circumstances. If a significant number of exemptions are granted by the regulatory agencies, then the Board may reexamine the propriety of the exemption provision.]

June 29, 1998 (Q&A #1 (partial withdrawal), 2 and 3)

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 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 MSRB included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Rule G-37, on political contributions and prohibitions on municipal securities business, became effective on April 25, 1994. During the past eight years, the MSRB believes that the rule has been successful in halting pay-to-play practices in the municipal securities market. As part of the MSRB's