

Also, a dealer could lift the ban on business if an MFP contributes to an issuer official for whom he or she is not entitled to vote without knowing that his or her firm does business with that issuer. The MSRB determined to limit the number of exemptions, as well as the dollar amount involved, to ensure that the automatic exemption provision could only be used in limited circumstances and not as an avenue for circumvention of the rule.

#### *Definition of Municipal Finance Professional*

#### *MFPs Primarily Engaged in Municipal Securities Representative Activities*

The Proposed Rule Change amends the definition of MFP so that associated persons "primarily engaged" in municipal securities representative activities based on their retail sales of municipal securities are excluded from the definition. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB believes that these instances do not outweigh the compliance burden of determining which of these persons are included in the rule. In addition, any retail sales representative who solicits municipal securities business would remain covered under the rule as an MFP.

#### *Look Back and Look Forward Provisions*

Since rule G-37 prohibits a dealer from engaging in municipal securities business within two years of certain contributions made by MFPs, a dealer must perform a two-year "look back" of its MFPs' contributions in order to make a determination on whether it is subject to any prohibitions on municipal securities business. Dealers have informed the MSRB that this look back has precluded them from hiring individuals who had made contributions, even though the contributions (which may have been relatively small) were made at a time when the individuals had no reason to be familiar with rule G-37. In addition, some dealers have noted how the look back has affected individuals with regard to in-firm transfers and promotions.

Once an individual is designated as an MFP by a dealer, he or she retains this designation for two years after the last activity or position which gave rise to the designation. This "look forward" provision has created compliance problems for some dealers in trying to track the contributions of individuals who have left their MFP positions and transferred to other areas in the firms.

The Proposed Rule Change produces the following results:

- *MFPs primarily engaged in municipal securities representative activities:* The two-year look back is retained, and the look forward is reduced to one year.
- *Solicitor MFPs:* The two-year look back is retained, but limited only to contributions to officials of the issuer solicited, and the look forward is reduced to one year.
- *Supervisor and management-level MFPs:* The look back is reduced to six months and the look forward is reduced to one year.

Thus, the two-year look back is retained for those MFPs who are primarily engaged in municipal securities representative activities and for those who solicit municipal securities business while the two year look forward is reduced to one year for these individuals. For supervisory and management-level MFPs, the look back is reduced to six months and the look forward is reduced to one year.<sup>5</sup> The MSRB believes that supervisors and management-level MFPs should remain subject to the rule while they hold their supervisory positions; however, the potential link between obtaining municipal securities business and contributions made by an individual prior to becoming an MFP solely by reason of taking on a new supervisory or management position is tenuous and therefore the shorter timeframes are appropriate. The MSRB notes that most supervisors in the municipal securities department will still be covered by the two-year look back because such individuals are "primarily engaged" in municipal securities representative activities.

In addition, many dealers over the years have raised concerns about bringing non-MFPs to meetings with issuers to solicit municipal securities business (e.g., an individual with expertise in asset-backed securities may be asked to attend a meeting with an issuer that is considering a securitization of tobacco settlement revenue or delinquent tax receipts) because the prior contributions of these individuals could result in a ban on business, even if made to issuers other than those solicited. Dealers believe that such a result is unreasonable given that the contribution by the solicitor MFP to another issuer's official would have no impact on the underwriter selection process of the issuer that he or she is soliciting. Accordingly, the Proposed

Rule Change limits the look back for solicitor MFPs (i.e., persons not primarily engaged in municipal securities representative activities) only to contributions to officials of the issuer solicited. Once these solicitors become MFPs, all of their subsequent contributions to any issuer official still will be covered by the rule.

#### *2. Statutory Basis*

The MSRB believes the Proposed Rule Change is consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("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 will facilitate dealer compliance with rule G-37, thereby further protecting investors and the public interest.

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

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

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

On April 2, 2002, the MSRB proposed for comment draft amendments relating to the exemption provision and the definition of municipal finance professional as contained in Rule G-37 (the "Notice"). The MSRB received nine comment letters from the following:

John M. Hartenstein ("Mr. Hartenstein"),  
Investment Company Institute ("ICI")  
MassMutual Financial Group ("MassMutual")  
Morgan Stanley & Co. Incorporated ("Morgan Stanley")  
National Association of State Treasurers ("NAST")  
Seasongood & Mayer, LLC ("Seasongood")  
T. Rowe Price Group, Inc. ("T. Rowe Price")  
The Bond Market Association ("TBMA")  
Wilmer, Cutler & Pickering ("Wilmer")  
(commenting on behalf of the

<sup>5</sup> The Proposed Rule Change also amends rule G-8(a)(xvi) to reduce the look back to six months for contributions made by non-MFP executive officers.