

Democratic National Committee ("DNC") and the Republican National Committee ("RNC").

Many commentators expressed their support for one or more of the proposals and provided suggestions for additional changes.

The Exemption Provision

Additional Relevant Factors To Be Added; Certain Qs & As To Be Withdrawn

The MSRB proposed the addition of the following relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption (conditional or unconditional) from the two-year ban on business:

- The nature of remedial or preventive measures directed specifically toward the contributor and all employees of the dealer.
- Whether, at the time of the contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment.
- The timing and amount of the contribution.
- The nature of the election (e.g., federal, state or local).
- The contributor's apparent intent or motive in making the contribution, as evidenced by the facts and circumstances surrounding such contribution.

The MSRB also proposed withdrawing certain Qs and As previously published concerning when an exemption may or may not be appropriate, noting that this action is necessary to clarify that the regulatory agencies have discretion in administering the exemption process.

Morgan Stanley and T. Rowe Price expressed support for the additional relevant factors and the withdrawal of certain Qs and As. Morgan Stanley believes that the MSRB "must go further to facilitate the NASD's equitable administration of the exemption process by adding an additional factor that expressly requires the NASD to consider the proportionality of the penalty to the violation." They argue that the MSRB "must emphasize to the NASD that it has at its disposal and must utilize the option of granting conditional exemptions to fashion remedies that are more proportional to the egregiousness of the violation."

Seasongood believes that the opportunity for exemptive relief should be available only to those dealers who discover problematic contributions prior to a third party discovering them. Seasongood argues that this approach

"will encourage firms to be forthright in dealing with violations and will more effectively punish firms who either are not vigilant in monitoring G-37 compliance or who willfully violate the rule."

MSRB Response. The two-year ban arose from the MSRB's view of the necessity of avoiding even the appearance of a conflict of interest by an issuer in awarding negotiated municipal securities business to a dealer that made contributions (or an MFP who made non-*de minimis* contributions) to issuer officials. In reviewing exemptive requests, the appropriate regulatory agencies examine the facts and circumstances surrounding each such request and, in addition to the relevant factors set forth in the rule, may examine *any other* factor they wish, including the size of the contribution and the potential business lost. The draft amendments add to the list of factors the timing and amount of the contribution, as well as the contributor's apparent intent or motive in making the contribution. The MSRB does not believe it is appropriate to add to the list of relevant factors the amount of business lost because then it could be argued that a contribution of any size should not result in a ban on business in a large issuing state. The MSRB believes such a result would go against the purposes of rule G-37.

In addition, rule G-37(i) states that the regulatory agencies may exempt, "conditionally or unconditionally," a dealer that is banned from engaging in municipal securities business with an issuer from such ban. The regulatory agencies may, if they deem it appropriate, reduce a ban on business to less than two years, and, in fact, have done so on certain occasions. Thus, the rule, as amended, already provides the regulatory agencies the ability to limit the extent of the ban on business in situations where, based on the specific facts and circumstances, a reduced penalty would be appropriate. Because the MSRB has no inspection or enforcement authority, it must defer to the regulatory agencies' judgment on these matters. Thus, the MSRB does not believe it is appropriate for it to *mandate* that the regulatory agencies grant conditional exemptions in appropriate cases, as suggested by Morgan Stanley.

The MSRB disagrees with Seasongood's suggestion that exemptions should only be available to those dealers who discover problematic contributions prior to someone else discovering them and reporting them to the authorities or the media. The MSRB believes that most dealers discover their

own problematic contributions and then apply to the NASD for exemptive relief in appropriate cases. While self-discovery of problematic contributions is a factor, it should not be a conclusive one against the dealer. A failure to self-discover does not mean that a dealer has willfully violated the rule.

Adoption of an Automatic Exemption Provision

The Notice requested comments on incorporating an automatic exemption provision into Rule G-37. The draft amendments provided for an automatic exemption from a dealer's ban on business in certain limited instances. The provision sets out procedures that would permit dealers to execute two such exemptions per 12-month period for contributions made by an MFP of \$250 or less if: (1) The dealer discovers the contribution within four months of the date of such contribution; (2) the contributor makes a written request for a return of the contribution within 30 calendar days of the dealer's discovery; and (3) the contributor obtains a refund within 30 calendar days of the written request. A dealer would not be permitted to execute more than one automatic exemption relating to contributions by the same MFP. The automatic exemption would not be available for contributions made by a dealer, a dealer-controlled PAC or an MFP-controlled PAC. Finally, dealers would be required to report the exemption on Form G-37/G-38 and to maintain records of such exemptions pursuant to rule G-8, on books and records. A dealer would be banned from municipal securities business until the contribution was returned.

TBMA supports the concept of an automatic exemption but believes "that a somewhat broader exemptive provision is warranted." They recommend increasing the allowable dollar amount to \$1,000, arguing that "contributions that are promptly identified and refunded in full would not reasonably influence the underwriter selection process" regardless of the amount. Morgan Stanley also recommends that the amount be increased to \$1,000, arguing that "the fact that a refund must be obtained in a prompt manner eliminates any perceived risk of pay-to-play."

The draft amendments required a dealer to make a written request for a refund within 30 days of discovering the contribution, and obtain the refund within 30 days of such request. TBMA recommends adding a measure of flexibility to the automatic exemption provision by combining these two time periods so that dealers would be