

required to obtain a refund within 60 days of discovering the contribution.

In its Notice, the MSRB noted that, in addition to the automatic exemption, dealers may continue to seek exemptions from the appropriate regulatory agency through the regular exemption process. TBMA argues that "it is likely that waivers will continue to be granted infrequently, and the process will continue to be time-consuming. Further, the mere existence of an automatic exemption may lessen the likelihood of obtaining a discretionary waiver in circumstances in which contributions are quickly discovered and refunded but do not meet all the requirements of the automatic exemption."

T. Rowe Price and Wilmer support the draft amendments in this area, but believe it is unfair to base the availability of the automatic exemption on a requirement that is outside the contributor's control, *i.e.*, obtaining a refund. T. Rowe Price recommends eliminating this requirement. ICI suggests that the requirement be changed to require that the contributor make a "good faith effort" within 30 calendar days of the dealer's discovery to obtain a return of the contribution, including making a written request for such return. T. Rowe Price also recommends that the Board eliminate the requirement that a dealer discover the contribution in a timely manner (*i.e.*, within four months).

Seasongood believes that an automatic exemption should be available only if the dealer itself discovers the rule violation (as opposed to another dealer discovering it and reporting it to the authorities or the media). They also argue that the automatic exemption should not be available if the contribution is returned after the election for which it was given, otherwise the candidate would derive the benefit of using the funds when they were needed most.

MSRB Response. The MSRB determined to adhere to the \$250 contribution limit for automatic exemptions since the provision is intended to apply to routine cases involving small contributions. With regard to the requirements that contributors make a written refund request within 30 days of discovery of the contribution and obtain a refund within 30 days thereafter, the MSRB adopted TBMA's suggestion that these two time periods be combined. Thus, the Proposed Rule Change requires the contributor to obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the dealer.

The MSRB did not adopt the recommendations of T. Rowe Price and Wilmer regarding the elimination of the requirement to actually obtain a refund or ICI's suggestion to make a "good faith effort" to obtain a refund. While it is true that the return of the contribution is not within the dealer's control, the automatic exemption provision should be limited to those circumstances where there is no appearance of a conflict of interest. In those circumstances where the contribution is not returned within the appropriate time frame, the MSRB believes that NASD or bank regulator review is needed through the regular exemption process. Therefore, a refund must be obtained in order to execute an automatic exemption.

Additionally, the MSRB believes that requiring dealers to discover offending contributions within four months of such contributions represents a reasonable time period that will encourage dealers to develop and institute good compliance procedures. The MSRB disagrees with T. Rowe Price's suggestion that this requirement be eliminated. The time periods proposed are fair and reasonable; so long as a dealer discovers, and obtains a refund of, the offending contribution within those time periods (and otherwise complies with the provision's requirements) the dealer should be permitted to avail itself of an automatic exemption.

Finally, the MSRB disagrees with Seasongood's suggestions that the automatic exemption should only be available to those dealers who discover the problematic contributions before someone else does and reports the information to the authorities or the media, and only if the contribution is returned before the election for which it was intended. As noted above, the MSRB believes that most dealers discover and report their own bans on business and then apply to NASD or bank regulator for exemptive relief. Moreover, the requirement that dealers discover the offending contributions within four months acts as a significant incentive for dealers to discover their own potential bans on business. The MSRB also did not adopt Seasongood's suggestion that dealers be required to obtain a refund prior to the election for which it was intended. Given the relatively small dollar amounts involved, the Board was not persuaded that this issue represented a significant problem or otherwise merited regulatory action.

Definition of Municipal Finance Professional

MFPs Primarily Engaged in Municipal Securities Representative Activities

The draft amendments provide for amending the definition of MFP to exempt retail sales representatives. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB proposed the draft amendments because of its belief 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 person who solicits municipal securities business would be covered under the rule as an MFP.

T. Rowe Price states that it strongly supports the proposal. It notes that it is in agreement "with the Board's belief that if the retail salesperson is not soliciting municipal securities business, the connection between the retail salesperson's contributions and any awarding of municipal securities business is very tenuous." T. Rowe Price notes that, for its firm, "where the registered representatives who deal with investors and potential investors in Section 529 Plan securities do not receive commission-based compensation and do not have their own client base * * * there is no connection between any contributions they may make and the awarding of a long-term contract by a state for the program management of its Section 529 Plan." It states that the "proposal brings much needed clarity to the area without diluting the effectiveness of Rule G-37."

Seasongood is opposed to the proposal. It states that firms are "seeking municipal underwriting business by touting the size and effectiveness of their retail sales force. As evidenced by the significant increase in issuers having a separate 'retail order period' prior to the regular order period, firms utilize their sales forces to generate underwriting fees from tax-exempt financings. Specifically, the takedown component, which is usually the largest part of an underwriter's fee, is being earned by the firm and the salesperson." Seasongood believes that the proposal will make it more difficult for a firm's competitor to uncover violations in helping to enforce compliance with the rule.

MSRB Response. The MSRB determined to exempt retail sales representatives from the definition of MFP. If a retail sales person is not soliciting municipal securities business, the appearance of a conflict of interest is negligible because there is little