

reason to believe that the contribution was intended to be, or taken to be, an attempt to gain influence in the awarding of municipal securities business. A retail sales person who solicits municipal securities business will still be covered under the rule as an MFP. The Commission staff asked that the MSRB make a technical language revision to the definition of MFP concerning retail sales persons to clarify that the exemption from the definition applies to sales activities with individual (not institutional) investors. The MSRB has done so.

Look Back and Look Forward Provisions

In the Notice, the MSRB requested comments on draft amendments concerning the look back and look forward provisions that would produce the following results:

- *MFPs primarily engaged in municipal securities representative activities*: Retain the two-year look back. Reduce the look forward to one year.
- *Solicitor MFPs*: Retain the two-year look back, but limit it only to contributions to officials of the issuer solicited. Reduce the look forward to one year.
- *Supervisor and management-level MFPs*: Eliminate the look back and look forward.

T. Rowe Price supports the proposals concerning both the look back and look forward provisions.

TBMA supports only the proposals for eliminating the look back and look forward provisions for supervisor and management-level MFPs. TBMA questions "whether the look back and overhang requirements, as applied to other persons, are justified." With respect to the look forward provision, TBMA states that "the MSRB has not identified *any* circumstances in which it is likely that a contribution by a former MFP for up to one year *after* losing that status is being made for the purpose of attracting municipal business." If the MSRB continues to apply look forward and look back provisions for MFPs primarily engaged in municipal securities representative activities and solicitor MFPs, TBMA states that a six-month period "is more than sufficient to remedy possible abuses." TBMA notes that "a six-month period is more consistent with the requirements of Rule G-38," on consultants, and that dealers "have designed their compliance systems to track such contributions over these time periods."

Seasongood states that the look forward provision should remain at two years and it should continue to apply to supervisor and management-level MFPs. With respect to the proposal to limit the

two-year look back for solicitor MFPs to contributions to officials of the issuer solicited, Seasongood notes that it "could not disagree more strongly." Seasongood states that the proposal "would eviscerate the definition of solicitation by allowing anyone to participate in a presentation calculated to appeal to issuer officials for municipal securities business without repercussions. This definition has been the lynchpin in preventing the "pay to play" games G-37 was designed to stop. If a firm soliciting municipal business can bring individuals to the presentation who are allowed to contribute to campaigns without being banned from their business, the MSRB will be opening a huge hole in the overall effectiveness of G-37 and the ability of competitors to discern when a violation has occurred."

MSRB Response. The MSRB determined to adopt the draft amendments to revise the look back and look forward provisions for MFPs primarily engaged in municipal securities representative activities and for solicitor MFPs. The MSRB believes it is important to retain the longer time frames for those MFPs more directly involved in obtaining municipal securities business. Once an associated person of a dealer solicits municipal securities business, the new look back requirement would be limited to officials of the issuer solicited. All contributions by this solicitor MFP to any issuer official would be covered going forward.

The SEC staff asked that the MSRB revise the proposal for supervisor and management-level MFPs as contained in the draft amendments. The SEC staff asked that the look back be revised to six months (instead of eliminated) and the look forward be reduced to one year (instead of eliminated). The MSRB has revised the requirements per the SEC staff's suggestions.

De Minimis Contributions

Maintain the "Entitled to Vote" Requirement

Contributions made by an MFP to officials of an issuer for whom the MFP is entitled to vote will not cause the MFP's dealer to be prohibited from engaging in municipal securities business with the issuer if the contributions, in total, are not in excess of \$250 by such MFP to each official of such issuer, per election. Wilmer believes that the *de minimis* exception should be available to any MFP, not just those entitled to vote for the particular candidate, arguing that "[t]here are compelling reasons that a contributor

who lives in one jurisdiction might want to support a candidate in a different jurisdiction. When a voter lives in a different jurisdiction from where the voter works, the voter might feel effected as much or more by the election of county or city officials in the work jurisdiction than at home." Similarly, NAST believes that the Board should eliminate the "entitled to vote" requirement, noting that "the determination of whether a contribution is so small as to be *de minimis* should not depend on where the contributor lives."

MSRB Response. The MSRB determined to maintain this requirement. Eliminating the requirement would allow national firms with numerous MFPs to make many contributions to an issuer official. This would create at least the appearance of a conflict of interest since the MFPs would have no direct interest in the issuer's jurisdiction.

Maintain the \$250 De Minimis Amount

NAST "strongly believes" that the *de minimis* amount should be raised to \$1,000 to correspond to current federal limits, arguing that:

First, Congress determined that \$1,000 per election is a sufficiently low amount that it does not raise conflict of interest or favoritism concerns. Inflation and the increasing amount of contributions required to compete in local, state, and national elections in many jurisdictions have diminished even further the potential impact of an individual appropriate to prevent corruption or the perception of corruption in connection with contributions in the amount of \$1,000 or less.* * * Second, increasing the *de minimis* contribution exemption to correspond with the federal contribution limit would significantly reduce the likelihood that a contributor might inadvertently trigger a two-year ban on business under rule G-37.* * * Finally, raising the *de minimis* exemption to the current FECA level would eliminate the disproportionate impact of rule G-37 on contributions to issuer officials who are candidates for federal office.

MSRB Response. First, the MSRB determined that \$250 continues to be an appropriate limit. Second, the inclusion of "the nature of the election" in the list of relevant factors should assist NASD and bank regulators in deciding whether to grant an exemptive request (conditionally or unconditionally) in view of the contribution amount and the federal contribution limits. Finally, the SEC's 1994 rule G-37 Approval Order rejected the argument of a