

the municipal finance professional made the contribution. Of course, dealer Y's prohibition on business only begins when the municipal finance professional becomes associated with that dealer.
(May 24, 1994)

II.13

Q: Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years.
(May 24, 1994)

II.14

Q: If a dealer hires an individual as a retail sales person, would the contributions made by that person prior to being hired subject the dealer to the two-year prohibition on municipal securities business?

A: The rule's two-year prohibition is triggered by contributions by dealers, municipal finance professionals, and political action committees controlled by a dealer or a municipal finance professional. If a retail sales person is not a municipal finance professional and does not become a municipal finance professional within two years after making a contribution to an issuer official, then such contributions will not trigger the ban on business. However, if the retail sales person is, or within two years becomes, a municipal finance professional (*e.g., by solicitation of officials of an issuer*), then contributions made by that person will subject the hiring dealer to the two-year ban on business. [For additional guidance in this area, please refer to Q's & A's numbered 14 through 16 published in the June 1994 issue of *MSRB Reports*.] *A retail sales person would not be considered to be a municipal finance*

professional solely because of his or her municipal securities retail sales activities. (See Rule G-37(g)(iv)).
(December 7, 1994)

II.15

Q: A person is associated with a dealer in a non-municipal finance professional capacity, and makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the dealer be prohibited from engaging in a negotiated underwriting with that issuer?

A: Yes, the dealer is subject to the prohibition for two years from the date the contribution was made.
(May 24, 1994)

II.16

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 [r]ule 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 dealer may wish to seek an exemption from the ban on business pursuant to Rule G-37(i) from its appropriate regulatory authority.*
(June 29, 1998)

Refund of Inadvertent Contribution

II.17

Q: A disgruntled municipal finance professional made a contribution purposely to subject the dealer to the two-year prohibition on business. When

the contribution is discovered by the dealer, a refund of the contribution is requested and obtained. Is the dealer still banned from engaging in business with that issuer? In addition, does the contribution have to be disclosed on Form G-37?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer by any municipal finance professional associated with such dealer if the contribution does not meet the *de minimis* exemption. Section (i) of the rule provides a procedure whereby dealers may seek relief from the appropriate enforcement agency of the rule G-37 prohibition on business [in limited circumstances]. In determining whether to grant such an exemption, one of the factors the enforcement agency will consider is whether the dealer has taken all available steps to obtain a return of the contribution. Even if a refund of the contribution has been obtained, dealers are required to seek an exemption from the ban on business. In addition, dealers also must disclose the contribution on Form G-37. Dealers may wish to indicate on the form (and in their own records) that a refund of the contribution was obtained. *See Rule G-37(i).*

(August 18, 1994)

Volunteer Work

II.18

Q: Is a municipal finance professional prohibited from performing volunteer work on an issuer official's behalf?

A: Rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work. However, soliciting and bundling of contributions would invoke application of the rule. In addition, if the municipal finance professional uses the dealer's resources (*e.g., a political position paper prepared by dealer personnel*) or incurs expenses in the conduct of such volunteer work (*e.g., hosting a reception*), then the value of such resources or expenses would constitute a contribution. Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g., cab fares and personal meals*), would not constitute a contribution.

(May 24, 1994)