

the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may not contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

(September 9, 1997)

Dealer-Controlled PAC

IV.24

Q: What is a "dealer-controlled" PAC?

A: Each dealer must determine whether a PAC is dealer controlled. For dealers, other than bank dealers, one may assume that any PAC of the dealer would be considered a dealer-controlled PAC for purposes of [r]Rule G-37. For bank dealers, it will depend upon whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.

(May 24, 1994)

V. Scope of Waiver Provision in Rule G-37(i)

VI.1

Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to [r]Rule G-37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a [r]Rule G-37 violation?

A: Rule G-37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G-37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate [r]Rule G-37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts

and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.

(March 1, 2000)

VI. Recordkeeping and Reporting (Rules G-37(e), G-8 and G-9)

[Q: Does a dealer have to collect information on political contributions for the two years prior to April 25, 1994]

[A: No. Records do not have to be maintained for contributions made or municipal securities business engaged in prior to April 25, 1994.

(May 24, 1994)]

VI.1

Q: If a dealer has instituted an internal voluntary ban on political contributions, is the dealer still subject to the recordkeeping requirements?

A: Yes. The Board amended [r]Rule G-8 and G-9, on recordkeeping and record retention, respectively, to require each dealer to maintain records of certain information. This recordkeeping is designed to assist dealers in determining whether or not they may engage in business with a particular issuer, as well as to facilitate compliance with, and enforcement of, [r]Rule G-37.

(May 24, 1994)

[Q: Rule G-8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term "issuer" includes the issuer of a separate security as defined in SEC Rule 3b-5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of a separate security is a private corporation, not a government entity. Must we record these "issuers"?]

[A: No, such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded.

(May 24, 1994)]

VI.2

Q: Rule G-8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term "issuer" includes the issuer of a separate security as defined in SEC Rule 3b-5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of

a separate security is a private corporation, not a government entity. Must we record these "issuers"?

A: No. Such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. Of course, dealers are required to record the governmental issuer in these situations, for both taxable and tax-exempt municipal securities.

(December 7, 1994)

VI.3

Q: What are the reporting requirements under rule G-37?

A: [Each dealer is required to file two copies of Form G-37 within 30 calendar days after the end of each calendar quarter (*i.e.*, by January 31, April 30, July 31 and October 31). The Board recently filed an amendment to rule G-37 with the SEC to require that the forms be submitted by certified or registered mail or some other equally prompt means that provides a record of sending. *See* the rule filing, SR-MSRB-94-5, for more information about this amendment.] *Dealers are required to submit Form G-37/G-38 to the MSRB by the last day of the month following the end of each calendar quarter. These submission dates correspond to January 31, April 30, July 31 and October 31 of each year. There is no fixed time frame for submission of Form G-37x. However, if a dealer wishes to rely on the Form G-37x exemption from the Form G-37/G-38 submission requirement for a particular calendar quarter, Form G-37x must be submitted by no later than the submission deadline for such quarter.*

(May 24, 1994)

VI.4

Q: Under what circumstances must Form G-37/G-38 be filed with the Board?

A: [Form G-37 must be filed with the Board if, during the reporting period, (i) political contributions were made by those entities and/or persons subject to rule G-37, and/or (ii) the dealer engaged in municipal securities business with an issuer, as defined in rule G-37(g)(vii). Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business. However, the making of contributions and the resulting awarding of municipal securities business may not come within a single reporting period. Thus, it is important that information on political contributions be disclosed even if no municipal securities business was engaged in during the reporting period. So too, it is important to disclose