

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(e)⁴ thereunder in that it establishes or changes a due, fee, or other charge imposed by MSTC. At any time within sixty days of the filing of such rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such act is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MSTV. All submissions should refer to File No. SR-MSTC-95-03 and should be submitted by April 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6087 Filed 3-10-95; 8:45 am]

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[Release No. 34-35446; File No. SR-MSRB-94-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-8 on Recordkeeping

March 6, 1995.

On August 18, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission")¹ a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder.³ The proposed rule change amends rule G-37 on political contributions and prohibitions on municipal securities business, and rule G-8 concerning recordkeeping.⁴

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34630, September 1, 1994) and by publication in the **Federal Register** (59 FR 46682, September 9, 1994). Eleven comment letters were received.⁵ This order approves the proposed rule change.

¹ On November 9, 1994, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 withdraws from the filing the proposed amendment to rule G-37(g)(iv)(A). The MSRB had proposed to amend the definition of "municipal finance professional" contained in rule G-37(g)(iv)(A) to exempt retail sales persons from being deemed "municipal finance professionals."

² 15 U.S.C. § 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ The Board published the text of the proposed rule change in the August 1994 *MSRB Reports*, Vol. 14, No. 4, at 27-32.

⁵ Letter from Mark D. Schwartz, Esq. ("Schwartz") to Arthur Levitt, Chairman, Commission, dated September 18, 1994 ("Schwartz Letter"); Letter from Heather L. Ruth, President, Public Securities Association ("PSA") to Jonathan G. Katz, Secretary, Commission, dated September 18, 1994 ("PSA Letter"); Letter from Patrick J. Manning, President, Chemical Securities Inc. ("Chemical") to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 ("Chemical Letter"); Letter from Rhonda G. Kirschner, Senior Attorney and Corporate Vice President, Paine Webber Inc. ("Paine Webber") to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 ("Paine Webber Letter"); Letter from Robin L. Wiessmann, Principal, Artemis Capital Group, Inc. ("Artemis") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Artemis Letter"); Letter from W. Robb Hough, Jr., President, William R. Hough & Co. ("Hough") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Hough Letter"); Letter from Robert K. Dalton, Vice Chairman and William H. Coughlin, President, George K. Baum & Co. ("Baum") to Jonathan G. Katz, Secretary, Commission, dated September 28, 1994 ("Baum Letter"); Letter from Brian C. Underwood, Vice President—Director of Compliance, A.G. Edwards &

I. Introduction

On April 7, 1994, the Commission approved Board rule G-37, concerning political contributions and prohibitions on municipal securities business.⁶ In response to numerous inquiries received by the Board concerning the application of the rule, on May 24, 1994, the Board filed with the Commission a Question and Answer ("Q&A") interpretation of the rule.⁷ On June 3, 1994, the Commission approved amendments to the rule which (i) provide a procedure whereby dealers may seek relief from the rule's prohibition on business, in limited circumstances, and (ii) clarify certain definitions in the rule.⁸ The Board has filed with the Commission subsequent Q&A interpretations of the rule.⁹ The rule change approved herein also is intended to address concern over certain aspects of rule G-37.

II. Amendments to Rule G-37 and Rule G-8

The rule change approved today amends rule G-37 and rule G-8 by: (i) amending the definition of municipal finance professional by designating as a municipal finance professional any associated person who is both (a) a municipal securities principal or a municipal securities sales principal and (b) a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business; (ii) amending the definition of municipal finance professional so that any person designated as a municipal finance

Sons, Inc. ("Edwards") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Edwards Letter"); Letter from Samuel J. Winer, Esq., Arter & Hadden to Jonathan G. Katz, Secretary, Commission, dated October 20, 1994 ("Arter & Hadden Letter"); Letter from A. George Saks, Executive Vice President, Secretary and General Counsel, Smith Barney Inc. ("Smith Barney") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Smith Barney Letter"); Letter from Steven D. Vander Clay, Vice President, NBD Bank, N.A. ("NBD") to Jill C. Finder, Assistant General Counsel, MSRB, dated October 20, 1994 ("NBD Letter").

⁶ Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994) ("Approval Order"). The rule applies to contributions made on and after April 25, 1994.

⁷ See Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994). The interpretations were published in the June 1994 *MSRB Reports*.

⁸ Securities Exchange Act Release No. 34160 (June 3, 1994), 59 FR 30376 (June 13, 1994).

⁹ See Securities Exchange Act Release No. 35128 (December 20, 1994), 59 FR 66989 (December 28, 1994); Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994). See also *MSRB Reports*, Vol. 14, No. 5, at 8 (December 1994); Vol. 14, No. 4, at 27-32 (August 1994). The interpretations also are available for inspection and copying at the Commission's public reference room and at the Board.

professional will keep that designation for two years after the last activity which would trigger that designation; (iii) requiring brokers, dealers and municipal securities dealers to disclose all *payments* made to political parties, even if the payments do not constitute *contributions* as defined in the rule; and (iv) amending the definition of "issuer" to exclude all issuers of separate securities, as defined in Rule 3b-5 under the Act.

A. Supervisors of Municipal Finance Professionals

Rule G-37(g)(iv) provides that the term "municipal finance professional" means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i);

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is a direct supervisor of such persons up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or

(D) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or similarly situated officials, if any.

Each person listed by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G-8(a)(xvi) is deemed to be a municipal finance professional.

A municipal finance professional is defined to include any direct supervisor of a municipal finance professional up through including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a).

For example, a person from the corporate department will be deemed a municipal finance professional if that person assist the municipal department in soliciting municipal securities business and all direct corporate department supervisors of that person also will be deemed municipal finance

professionals under rule G-37, regardless of whether that person's municipal securities activities are subject to the supervision of a principal in the municipal securities department. Concern has been expressed that this part of the definition unnecessarily covers persons whose duties and activities do not provide them with an opportunity or incentive to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials.

The MSRB noted in its initial filing of rule G-37 that the definition of municipal finance professional includes those individuals who have a pecuniary interest in soliciting municipal securities business on behalf of a dealer. It is those persons who may be in a position to make political contributions for the purpose of influencing the awarding of such business by issuer officials. Such persons could include those in the public finance department, as well as underwriters, traders and institutional and retail sales persons primarily engaged in municipal securities representative activities. However, a corporate department supervisor typically does not have a pecuniary interest in soliciting municipal securities business, and typically does not acquire such an interest solely because a person supervised by that supervisor assists the municipal department by soliciting work from a municipal issuer.

The MSRB believes that amending the definition of municipal finance professional to designate as a municipal finance professional only a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business who also is a municipal securities principal or a municipal securities sales principal will facilitate compliance with rule G-37. Thus, in the example given above, the corporate department supervisors would not be included in the definition of municipal finance professional.

The MSRB continues to believe that if a retail sales person becomes a municipal finance professional by virtue of soliciting municipal securities business, then the municipal securities principal responsible for supervising that person's municipal securities activities should be designated a municipal finance professional. In most cases, this would include the sales person's branch manager (a municipal securities sales principal). Such supervisory personnel continue to be included within the definition of municipal finance professional because

the MSRB is concerned that retail sales persons may solicit municipal securities business at the request of, or at least with the knowledge of, their supervisors. Thus, the amendment is intended to ensure that, if retail sales persons are soliciting municipal securities business, the supervisors of such persons also are deemed to be municipal finance professionals.

Finally, the definition of municipal finance professional has been amended to clarify that the supervisors of the municipal securities principals and municipal securities sales principals included within the definition also are deemed to be municipal finance professionals.

B. Designation as a Municipal Finance Professional

The MSRB has been asked whether a dealer can establish its own standards under which someone who solicits municipal securities business could relinquish municipal finance professional status upon completing the solicitation activity.¹⁰ The rule change approved today amends rule G-37(g)(iv) to provide that each person designated by a dealer as a municipal finance professional shall retain this designation for two years after the last activity or position which gave rise to the designation. For instance, if an associated person is designated a municipal finance professional due to that person's solicitation activities, then that designation shall extend for two years from the date of the particular solicitation. Moreover, if this person continues to solicit municipal business, then each such solicitation triggers a new two-year period. Thus, if a municipal finance professional wants to divest himself of this designation, he must forego all soliciting of municipal business for two years (as well as avoid the other situations, set forth in rule G-37(g)(iv), giving rise to the designation of municipal finance professional). So too, if an institutional sales person primarily engaged in municipal securities representative activities is transferred to the corporate department, such person's contributions to officials of issuers and payments to political parties must be recorded for two years after such transfer.¹¹ The amendment is intended to ensure that contributions and payments by municipal finance professionals are not being made to influence the awarding of municipal

¹⁰ See Letter from Heather L. Ruth, President, PSA to Diane G. Klinke, General Counsel, MSRB (July 25, 1994) ("July PSA Letter"), *supra* n. 6.

¹¹ However, rule G-37 does not require a firm to monitor and record the activities of a municipal finance professional that it no longer employs.

securities business. The amendment also will allow dealers, after this two-year period, to remove these persons from their list of municipal finance professionals.

C. Contributions and Other Payments Made to Political Parties

Contributions to political parties do not trigger rule G-37's prohibition on business. Such contributions, however, are subject to the rule's recordkeeping and reporting provisions, as set forth in rule G-8(a)(xvi). These disclosure requirements are intended to help ensure that dealers do not circumvent the prohibition on business in the rule by indirect contributions to issuer officials through contributions to state or local political parties. For example, if a contribution to a political party is earmarked or known to be provided to an official or officials of a particular issuer, then the dealer would violate the rule's proscription against indirect violations, thereby triggering the two-year prohibition on business with that issuer.

Certain dealers and other industry participants have notified the MSRB that certain political parties currently are engaging in fundraising practices which, according to these political parties, do not invoke application of rule G-37. For example, some of these entities currently are urging dealers to make payments to political parties earmarked for expenses other than political contributions (such as administrative expenses or voter registration drives). Since these payments would not constitute "contributions" under the rule, the recordkeeping and reporting provisions would not apply. The MSRB is concerned, based upon this information, that the same pay-to-play pressures that motivated the Board to adopt rule G-37 may be emerging in connection with the fundraising practices of certain political parties described above.

The purpose of those disclosure requirements in rule G-37 pertaining to political parties is to ensure that funds contributed to political parties by dealers, Political Action Committees ("PACs"), municipal finance professionals and executive officers do not represent attempts to make indirect contributions to issuer officials, in contravention of rule G-37. The rule change approved today amends the recordkeeping and reporting provisions of rule G-37 (as set forth in rule G-8(a)(xvi)) to require dealers to record and disclose all payments made to political parties. The term "payment" is defined as any gift, subscription, loan, advance or deposit of money or

anything of value. This definition is derived from the definition of "contribution" in rule G-37(g)(i), but does not include the limits on the purposes for which such money is given, as currently set forth in the definition of contribution.

Thus, the amendment will require dealers to record and report any payments to political parties by dealers, PACs, municipal finance professionals and executive officers, regardless of whether those payments constitute contributions. These disclosure requirements are intended to assist in severing any connection between payments to political parties and the awarding of municipal securities business. The amendment is not intended to restrict the personal volunteer work of municipal finance professionals for political parties.

D. Definition of Issuer

Under rule G-37, the term "issuer" is defined as any governmental issuer specified in Section 3(a)(29) of the Act (*i.e.*, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states) and the issuer of any separate security, including a separate security as defined in Rule 3b-5 under the Act. In most instances, the issuers of separate securities are corporate obligors of industrial revenue bonds and bank issuers of letters of credit.

As noted above, rule G-37 was adopted in order to cleanse the municipal securities market of pay-to-play pressures. However, pay-to-play pressures do not exist when the issuer of a separate security is a corporate obligor of industrial revenue bonds or a bank issuer of a letter of credit. The Board itself recognized this when it noted in its May 1994 Q & A that, when filing Form G-37, dealers do not have to include corporate issuers in industrial development bond issues because no contributions (as defined in rule G-37) would be made to such corporations.¹² Therefore, the rule change amends the rule G-37 definition of issuer by omitting issuers of separate securities from the definition of issuer.

III. Comment Letters

A. Supervisors of Municipal Finance Professionals

Chemical and Artemis express unqualified support for designating as municipal finance professionals only those supervisors of municipal finance professionals who are also municipal securities principals or municipal

securities sales principals. The PSA Letter also expresses general support for this amendment. The Edwards Letter expresses support for the views expressed in the PSA Letter; therefore, Edwards generally supports this amendment.

Schwartz opposes this amendment. The Schwartz Letter asserts that the amendment would "open a loophole further" because political fundraising has been happening across departments. The Commission notes that the amendment does not purport to exclude all supervisors of municipal finance professionals. Furthermore, the MSRB stated that the amendment was designed to cover situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors.

The Arter & Hadden Letter also expresses opposition to this amendment. The Arter & Hadden Letter reasons that the supervisor of a retail sales person involved in municipal securities solicitation activity may not be involved in supervising that person's solicitation activity. The Arter & Hadden Letter argues that the MSRB was correct to amend rule G-37 so that a supervisor of persons primarily engaged in municipal securities representative activities or who solicit municipal securities business is deemed a municipal securities professional only if that supervisor is also a municipal securities principal or a municipal securities sales principal. However, the Arter & Hadden Letter criticizes the proposed amendment because, it asserts, the MSRB states that it would deem a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. Arter & Hadden asserts that a branch manager does not have the background or expertise to supervise the solicitation activities of a retail sales representative; therefore, a branch manager should not be restricted in the same manner as a person who does have the background and expertise to supervise the solicitation activities of a retail sales representative.¹²

¹² Pursuant to rule G-37, a contribution is defined as "any gift, subscription, loan advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office." Thus, by definition, any funds given to corporate issuers would not constitute a "contribution", since such corporations are not the issuers or issuer officials contemplated by the rule.

Smith Barney also opposes this amendment. The Smith Barney Letter objects to the MSRB deeming a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. It notes that the MSRB is concerned about situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors; Smith Barney does not consider those reasons sufficient to justify the apparent breadth of the amendment. Smith Barney states that a simpler approach would be to interpret solicitation as asking others to solicit, and that the MSRB should not be concerned about supervisors who simply know that their sales persons are soliciting municipal securities business. The Commission believes that, while Smith Barney may be correct in theory, as a practical matter, Smith Barney's solution will make enforcement of the rule much more difficult. It believes that the practical difficulties of enforcing the rule if it were amended as Smith Barney suggests outweigh any compliance burdens imposed by the amendment. The Commission thus believes that the need for a prophylactic provision also outweighs the concerns expressed by Arter & Hadden concerning the burden imposed upon branch managers.¹³

B. Designation as a Municipal Finance Professional

Chemical and Artemis also express support for requiring each person designated by a dealer as a municipal finance professional to retain this designation for two years after the last activity or position which gave rise to the designation. The Chemical Letter states that the two year designation period matches the two year disqualification length contained in rule G-37(b) and provides clarity.

NBD opposes this amendment. NBD states that this amendment will create an undue reporting burden and would be unworkable from a supervisory standpoint. The NBD Letter reasons that if the designated municipal finance professional left the firm at which the professional engaged in the activity that gave rise to the designation, then that firm no longer would maintain any supervisory control over that individual, and therefore, any political activities of the individual would no longer benefit that firm and would be impossible to

monitor. The NBD Letter also argues that if an employee is transferred to another department, then supervisory authority is severed. NBD regards it as "unlikely" that an employee would be transferred to another department in order to circumvent rule G-37.

With respect to the issue of monitoring municipal finance professionals who have left a firm, the Commission notes that rule G-37 does not require a firm to monitor the activities of a municipal finance professional that it no longer employs. With respect to the issue of whether a firm receives any continuing benefits from a municipal finance professional no longer employed by that firm, the Commission believes that whether or not a firm benefits from the political activities of an individual that occur after the individual leaves the firm, or is transferred, a firm may continue to enjoy the benefits that flow from that employee's activities even after that employee left the firm or was transferred. Rule G-37 reflects a reasoned judgment that certain activities may corrupt the awarding of municipal securities business, not only at the time of the activity, but for a certain period of time thereafter.

C. Miscellaneous Comments

Chemical and Artemis expressed support for the remainder of the rule change.

The PSA believes that the MSRB should further amend rule G-37 to:

- establish a threshold percentage of commissions below which a registered representative would not be considered a municipal finance professional;
- establish guidelines concerning how frequently they must review their records to identify registered representatives as municipal finance professionals;
- clarify that the MSRB will not retroactively apply the municipal finance professional designation to persons who were not initially identified by the broker, dealer or municipal securities dealer as a registered representative, but subsequently engage in activities that would trigger application.
- codify procedures for brokers, dealers and municipal securities dealers to follow to ensure that municipal finance professionals are being identified.

The Commission believes that the MSRB may address these comments in the context of a separate proposed rule change filed with the Commission. It does not believe that these comments must be addressed in the context of this rule change.

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C)¹⁴ of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission believes that the rule change is in the public interest and removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments: (i) tailor the application of rule G-37 to those persons who may be in a position to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials; (ii) require disclosure of certain payments which may have the effect of influencing the awarding of municipal securities business; and (iii) eliminate the restrictions imposed by rule G-37 with respect to certain transactions and practices which are not likely to influence the awarding of municipal securities business by issuer officials.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-MSRB-94-14 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

[FR Doc. 95-6029 Filed 3-10-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20941; No. 812-9232]

Security Benefit Life Insurance Company, et al.

March 6, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security Benefit Life Insurance Company ("SBL"), T. Rowe Price Variable Annuity Account ("SBL Separate Account"), Pioneer National

¹³The Commission notes that the amendment does not add any compliance burden that is not imposed under the current version of rule G-37.

¹⁴ 15 U.S.C. § 78o-4.