

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 30, 1998.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release NO. 34-408545; File No. SR-MSRB-97-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 hereunder,<sup>2</sup> notice is hereby given that on December 18, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-97-12) as described in Items I, II, and III below, which Items have been prepared by the Board. On December 3, 1998, the Board file Amendment No. 1 which supersedes the initial proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as contained in Amendment No. 1 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed rule change

The Board has filed with the Commission a proposed rule change consisting of amendments to Rule G-37, on political contributions and

prohibitions on municipal securities business, Rule G-8, on recordkeeping, Rule G-9, on preservation of records, and Rule G-38, on consultants. In addition, the MSRB submitted proposed Form G-37x as part of Amendment No. 1. Below is the text of the proposed rule change. Additions are italicized; deletions are bracketed.

#### Rule G-37. Political Contributions and Prohibitions on Municipal Securities Business

(a)-(d) No change.

(e)(i) *Except as otherwise provided in paragraph (e)(ii), each [Each] broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31), send to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, [and the Board shall make public, reports on contributions to officials of issuers and on payments to political parties of states and political subdivisions that are required to be recorded pursuant to rule G-8(a)(xvi). Such reports shall include information concerning the amount of,] two copies of Form G-37/G-38 setting forth, in the prescribed format, the following information:*

(A) *for contributions to officials of issuers (other than a contribution made by a municipal finance professional or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed \$250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional or a non-MFP executive officer to a political party of a state or political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed \$250 per year): [and an indication of the contributor category of each contribution or payment] made by the persons and entities described in subclause (2) of this clause (A):*

[ (A) the broker, dealer or municipal securities dealer;]  
[ (B) all municipal finance professionals;]  
[ (C) all non-MFP executive officers; and]  
[ (D) all political action committees controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional.]

[Such reports also shall include information on municipal securities business engaged in and certain other information specified in this section (e), as well as other identifying information as may be determined by the Board from time to time.]

[(ii) Two copies of the reports referred to in paragraph (i) of this section (e) must be sent to the Board on Form G-37/G-38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31), and must include, in the prescribed format, by state, the following information on contributions to each official of an issuer and payments to each political party of a state or

political subdivision made and municipal securities business engaged in during the reporting period:]

[(A)] (1) *the name and title (including and city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments during such calendar quarter, listed by state;*

[(B)] (2) *the contribution or payment amount made and the contributor category of each of the following persons and entities [described in paragraph (i) of this section (e); and (C) such other identifying information required by Form G-37/G-38. Such reports also must include] making such contributions or payments during such calendar quarter:*

(a) *the broker, dealer or municipal securities dealer;*  
(b) *each municipal finance professional;*  
(c) *each non-MFP executive officer; and*  
(d) *each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;*

(B) *a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business during such calendar quarter, listed by state, along with the type of municipal securities business;*

(C) *any information required to be included on Form G-37/G-38 for such calendar quarter pursuant to paragraph (e)(iii);*

(D) *any information required to be disclosed pursuant to section (d) of rule G-38; and*

(E) *such other identifying information required by Form G-37/G-38.*

The Board shall make public a copy of each Form G-37/G-38 received from any broker, dealer or municipal securities dealer.

(ii)(A) *No broker, dealer or municipal securities dealer shall be required to send Form G-37/G-38 to the Board for any calendar quarter in which either:*

(1) *such broker, dealer or municipal securities dealer has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or*

(2) *subject to clause (B) of this paragraph (e)(ii), such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:*

(a) *had not engaged in municipal securities business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and*

(b) *has sent to the Board, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of a completed Form G-37x setting forth, in the prescribed format, (i) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (ii) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such broker, dealer or municipal securities dealer*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On December 18, 1997, the MSRB submitted its initial proposal which would not require Rule G-37 disclosures by dealers who have not engaged in municipal securities transactions for 2 years. Also the proposal would not have required dealers subject to reporting requirements to make any filing in the event they have nothing to disclose. After discussions between the Commission and the MSRB, the MSRB filed Amendment No. 1 on December 3, 1998. While the revised proposal maintains the exemptions of the disclosure requirements, it includes a dealer certification as a precondition to the effectiveness of the exemptions created in the original proposal.

in connection with Forms G-37/G-38 and G-37x under this paragraph (e)(ii) and rule G-8(a)(xvi), and (iii) such other identifying information required by Form G-37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G-37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this subclause (A)(2). The Board shall make public a copy of each Form G-37x received from any broker, dealer or municipal securities dealer.

(B) If for any calendar quarter a broker, dealer or municipal securities dealer has met the requirements of clause (A)(2) of this paragraph (e)(ii) but has information that is required to be reported pursuant to clause (D) of paragraph (e)(i), then such broker, dealer or municipal securities dealer shall be required to send Form G-37/G-38 to the Board for such quarter setting forth only such information as is required to be reported pursuant to clauses (D) and (E) of paragraph (e)(i).

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G-37/G-38 the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (A)(2) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G-37/G-38 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(f)-(i) No change.

#### Rule G-8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)-(xv) No change.

(xvi) (A)-(G) No change.

(H) Dealers shall maintain copies of the Forms G-37/G-38 and G-37x submitted to the Board along with the certified or registered mail receipt or other record of sending such forms to the Board.

(I)-(J) No change.

(K) No broker, dealer or municipal securities dealer shall be subject to the requirements of this paragraph (a)(xvi) during any period that such broker, dealer or municipal securities dealer has qualified for and invoked the exemption set forth in clause (A)(2) of paragraph (e)(ii) of rule G-37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker,

dealer or municipal securities dealer that has been exempted by this clause (K) from the requirements of this paragraph (a)(xvi) engages in any municipal securities business, all requirements of this paragraph (a)(xvi) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such broker, dealer or municipal securities dealer.

(xvii)-(xix) No change.

(b)-(f) No change.

#### Rule G-9. Preservation of Records

(a) Records to be Preserved for Six Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i)-(vii) No change.

(viii) the records to be maintained pursuant to rule G-8(a)(xvi); provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

#### Rule G-38. Consultants

(a)-(c) No change.

(d) Disclosure to Board. Each broker, dealer or [and] municipal securities dealer shall send to the Board, in the manner and at the times prescribed in paragraph (e)(i) of rule G-37, [by certified or registered mail, or some other equally prompt means that provides a record of sending,] and the Board shall make public, reports on Form G-37/G-38 of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. [Two copies of the reports must be sent to the Board on Form G-37/G-38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31).] Such reports shall include, for each consultant, in the prescribed format, the consultant's name, company, role and compensation arrangement. In addition, such reports shall indicate the dollar amount of payments made to each consultant during such calendar quarter [the report period] and, if any such payments are related to the consultant's efforts on behalf of the broker, dealer or municipal securities dealer which resulted in particular municipal securities business, then that business and the related dollar amount of the payment must be separately identified.

\* \* \* \* \*

#### Proposed Form G-37x

##### Form G-37x—MSRB

Name of Dealer: \_\_\_\_\_

The undersigned, on behalf of the dealer identified above, does hereby certify that such dealer did not engage in "municipal securities business" (as defined in rule G-37) during the eight full consecutive calendar quarters ending immediately on or prior to the date of this Form G-37x.

The undersigned, on behalf of such dealer, does hereby acknowledge that, notwithstanding, the submission of this Form G-37x to the MSRB, such dealer will be required to:

(1) submit Form G-37/G-38 for each calendar quarter unless it has met all of the

requirements for an exemption set forth in rule G-37(e)(ii) for such calendar quarter; (2) submit Form G-37/G-38 for each calendar quarter in which it has information relating to consultants that is required to be reported pursuant to rule G-37(e)(ii)(B), regardless of whether the dealer has qualified for the exemption set forth in rule G-37(e)(ii)(A)(2);

(3) undertake the recordkeeping obligations set forth in rule G-8(a)(xvi) at such time as it no longer qualifies for the exemption set forth in rule G-8(a)(xvi)(K);

(4) undertake the disclosure obligations set forth in rule G-37(e), including in particular the disclosure obligations under paragraph (e)(iii) thereof, at such time as it no longer qualifies for the exemption set forth in rule G-37(e)(ii)(A)(2); and

(5) submit a new Form G-37 in order to again meet the requirements for the exemption set forth in rule G-37(e)(ii)(A)(2) in the event that the dealer has engaged in municipal securities business subsequent to the date of this Form G-37x and thereafter wishes to qualify for said exemption.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

(must be officer of dealer)

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Submit to: Municipal Securities Rulemaking Board, 1640 King Street, Suite 300, Alexandria, Virginia 22314.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Rule G-37 prohibits a broker, dealer or municipal securities dealer (a "dealer") that effects transactions in municipal securities from engaging in municipal securities business<sup>4</sup> with an

<sup>4</sup> Municipal securities business is defined in Rule G-37 to encompass certain activities of dealers in connection with primary offerings of municipal securities, such as acting as underwriter in a negotiated sale, as placement agent, or as financial advisor, consultant or remarketing agent to an issuer in which the dealer was chosen on a negotiated basis.

issuer within two years after certain contributions to an official of such issuer made by the dealer, any municipal finance professional ("MFP") associated with such dealer (other than certain *de minimis* contributions) or any political action committee ("PAC") controlled by the dealer or any MFP. In addition, Rules G-37 and G-38 require dealers to make disclosures of certain contributions to issuer officials, payments to state and local political parties, consultant arrangements and municipal securities business on Form G-37/G-38. Rule G-8 requires dealers to create records of such contributions, payments, consultants and issuers with which the dealer has engaged in municipal securities business and rule G-9 requires dealers to preserve these records for a period of at least six years.

Although the Board continues to be vigilant for any evidence that political contributions may affect the awarding of municipal securities business, the Board believes that the direct connection between political contributions to issuer officials and the awarding of municipal securities business has been substantially reduced during the last four years by Rule G-37. The Board is sensitive, however, to the burden imposed on dealers by the requirements of Rules G-37 and G-8 and is committed to reducing this burden whenever possible as long as the effectiveness of the rules is not impaired.

Every dealer currently is obligated to comply with the reporting requirements of Rule G-37 by submitting Form G-37/G-38 to the Board on a quarterly basis and to undertake the related recordkeeping obligations under Rule G-8, even if a dealer does not engage in municipal securities business.<sup>5</sup> Upon reviewing the first four years of operation of Rule G-37, the Board believes that requiring dealers that do not engage in municipal securities business to comply with these disclosure and recordkeeping obligations does not substantially further Rule G-37's stated purpose of exposing to public scrutiny contributions and payments that may be

<sup>5</sup> The range of activities encompassed by the term municipal securities business is significantly narrower than the types of activities that can cause a dealer to be subject to the obligation to comply with Board rules. For example, a dealer that effects municipal securities transactions that are limited to secondary market trades for its customers or underwritings of new issues solely through competitive sales is not, by effecting such transactions, engaging in municipal securities business within the meaning of Rule G-37. However, such dealer is still required to undertake the disclosure and recordkeeping obligations under current Rules G-37 and G-8 with respect to contributions and payments.

linked to the awarding of municipal securities business.

Thus, the Board is proposing certain amendments to Rules G-37 and G-8 designed to sharpen the focus of the reporting and recordkeeping obligations by exempting dealers that do not engage in municipal securities business from these obligations.<sup>6</sup> Dealers invoking this new exemption (hereinafter referred to as the "No Business Exemption") will be required to meet two preconditions and will be subject to a third requirement if they after begin engaging in municipal securities business. As more fully described below, in order to invoke this No Business Exemption, a dealer must (1) not have engaged in municipal securities business for a period of at least two years; and (2) submit to the Board new Form G-37x. If such a dealer thereafter begins to engage in municipal securities business, it would also become subject to a disclosure and recordkeeping look back requirement (hereinafter referred to as the "Look Back Requirement") that will obligate the dealer to create records of, and to disclose on Form G-37/G-38, certain contributions to issuer officials and payments to state and local political parties made during the preceding two-year period.

In addition, the Board is proposing amendments to Rule G-37 to codify a previously recognized exemption to the Form G-37/G-38 submission requirement for any quarter in which a dealer has no information to report (hereinafter referred as the "No Information Exemption"). The Board also is requiring certain technical amendments to consolidate the provisions currently appearing separately in Rules G-37 and G-38 relating to submission of Form G-37/G-38, to clarify Rule G-37 by eliminating certain cross-referencing to Rule G-8 and to provide for the maintenance and preservation under Rules G-8 and G-9 of any Forms G-37x submitted to the Board.

#### a. No Business Exemption for Dealers Not Engaged in Municipal Securities Business

A dealer that qualifies for the No Business Exemption under amended Rule G-37(e)(ii)(A)(2) would not be required to report information to the Board on Form G-37/G-38 regarding contributions to issuer officials and payments to state and local political

<sup>6</sup> This exemption would not extend to the reporting requirements under Rule G-38. Therefore, as amended, Board rules would continue to require the submission of information on Form G-37/G-38 concerning the use of consultants pursuant to Rule G-38.

parties and would not be required to create records of such contributions and payments pursuant to new clause (K) of Rule G-8(a)(xvi).<sup>7</sup> If a dealer that has invoked the No Business Exemption later engages in municipal securities business, such dealer would become subject to the Look Back Requirement under new paragraph (iii) of Rule G-37(e).

#### i. No Municipal Securities Business for at Least Two Years

The first condition for invoking the No Business Exemption in any calendar quarter, as set forth in amended Rule G-37(e)(ii)(A)(2)(a), is that the dealer must not have engaged in municipal securities business during such calendar quarter and during the seven consecutive calendar quarters immediately preceding such calendar quarter. Any dealer that has previously engaged in municipal securities business may qualify for the No Business Exemption if it has ceased such business for the requisite period of time. In addition, any dealer that has never engaged in municipal securities business may also qualify for the No Business Exemption, regardless of how long such dealer has been in existence.<sup>8</sup>

#### ii. Submission for Form G-37x

The second condition for invoking the No Business Exemption, as set forth in amended Rule G-37(e)(ii)(A)(2)(b), is that the dealer must have sent, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of new Form G-37x to the Board. Form G-37x would include a certification that such dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certificate. A Form G-37x submitted to the Board would remain in effect for so long as the dealer continues to refrain from engaging in municipal securities

<sup>7</sup> However, dealers still would be required to maintain copies of any Forms G-37/G-38 submitted to the Board during the period of exemption (*e.g.*, in connection with information relating to use of consultants) and of any Forms G-37x submitted to the Board to invoke the No Business Exemption. In addition, the recordkeeping exemption would not entitle a dealer to discontinue preservation of any records previously created under Rule G-8(a)(xvi) unless the period for preserving such records under Rule G-9(a)(viii) has lapsed.

<sup>8</sup> For this purpose, the Board would deem that a dealer that has been subjects to the rules of the Board for a period of less than two years (for example, because it came into existence during such period or because it previously affected only non-municipal securities transactions) and has not engaged in any municipal securities business since becoming subject to Board rules would automatically satisfy this two-year requirement of the No Business Exemption.

business.<sup>9</sup> Notwithstanding the submission of Form G-37x, a dealer would remain responsible for determining whether it continues to qualify for an exemption from the Form G-37/G-38 submission requirement for each calendar quarter.<sup>10</sup> Form G-37x would contain an acknowledgment of the dealer to this effect and a further acknowledgment that it will be required to undertake the recordkeeping and disclosure obligations under the Look Back Requirement at such time as it again engages in municipal securities business.

Forms G-37x submitted to the Board will be made available to the public on the same basis as are Forms G-37/G-38. Thus, Forms G-37x will be available for review and photocopying at the Board's Public Access Facility in Alexandria, Virginia. In addition, copies will be posted on the Board's Internet Web site (<http://www.msrb.org>), where members of the public may download such forms to their computers for review and printing free of charge. Such forms also will be made available to the public, along with Forms G-37/G-38, in computer CD-ROM format on a quarterly basis.<sup>11</sup>

### iii. Look Back Requirement Upon Engaging in Municipal Securities Business

A dealer that has invoked the No Business Exemption but that later begins engaging in municipal securities

<sup>9</sup> Thus, if after submitting Form G-37x the dealer undertakes any municipal securities business (thereby subjecting itself to the Look Back Requirement) and thereafter again seeks to invoke the No Business Exemption after a new period of two years without engaging in any further municipal securities business, such dealer would be required to submit a new Form G-37x. However, dealers would carefully consider the advisability of alternating between periods of undertaking municipal securities business and periods of invoking the No Business Exemption, particularly in view of the strict requirements of the Look Back Requirement described below and the potential difficulties in complying with such strict requirement.

<sup>10</sup> Thus, the dealer must determine whether it has met all of the requirements for the No Business Exemption or the No Information Exemption for such quarter. In addition, the dealer would be required to submit Form G-37/G-38 for any calendar quarter in which it has information to report regarding consultants under Rule G-38, as discussed below, even if the dealer continues to qualify for the No Business Exemption.

<sup>11</sup> CD-ROMs are currently priced at \$10.00 (plus delivery or postage charges and any applicable sales tax) for each CD-ROM containing copies of Form G-37/G-38 and at \$11.50 (plus delivery or postage charges and any applicable sales tax) for each such CD-ROM that is bundled with a CD-ROM containing the software necessary to access and read the forms on a computer. See Securities Exchange Act Release No. 39488 (December 23, 1997), 63 FR 280 (January 5, 1998). The Board anticipates that Forms G-37x would be included in these CD-ROMs at no additional cost.

business would become subject to the two-pronged Look Back Requirement under new paragraph (iii) of Rule G-37(e). With respect to recordkeeping, the Look Back Requirement provides that a dealer that engages in municipal securities business after having invoked the No Business Exemption must create records of political contributions and payments to state and local political parties under G-8(a)(xvi) for the then current calendar year and the two preceding calendar years and must continue to create such records thereafter unless the dealer again qualifies for, and invokes, the No Business Exemption.<sup>12</sup> Before engaging in municipal securities business with an issuer, such dealer would need to review the newly created records to ensure that it has not been banned from business with the issuer as a result of a contribution to an official of the issuer during the period that the dealer had invoked the No Business Exemption.

In addition, a dealer that engages in municipal securities business after having invoked the No Business Exemption must disclose on Form G-37/G-38 for the calendar quarter in which it first engages in municipal securities business all reportable contributions to issuer officials and payments to state and local political parties made during the preceding two years by the dealer, any MFP, and non-MFP executive officer or any dealer-controlled or MFP-controlled PAC, to the extent not previously reported as a result of the No Business Exemption.<sup>13</sup> Such dealer also would be required to send Form G-37/G-38 to the Board for each calendar quarter thereafter unless the dealer qualifies for the No Information Exemption described below or again qualifies for, and invokes, the No Business Exemption.

<sup>12</sup> A dealer that is creating records under the Look Back Requirement must re-create the records that would have been made during the then current calendar year and the two preceding calendar years but for the No Business Exemption. This includes the political contributions and payments to state and local political parties made by any individual who was an MFP or a non-MFP executive officer during this look back period. The dealer must also create records of the contributions and payments of individuals who became MFPs or non-MFP executive officers during the look back period made prior to becoming an MFP or a non-MFP executive officer of such dealer. A dealer would not be required to create records of contributions or payments made prior to such look back period.

<sup>13</sup> In reporting prior contributions and payments on such calendar quarter's Form G-37/G-38, a dealer would be required to include the year and calendar quarter in which each such prior contribution or payment was made. A dealer, however, would not be required to include in such report contributions or payments made more than two years prior to such quarter, even if not previously reported.

The Look Back Requirement is intended to prevent circumvention of the rule and to promote public scrutiny of all contributions to issuer officials and payments to state and local political parties (other than qualifying *de minimis* contributions and payments) that may affect the awarding of municipal securities business to any dealer that is newly engaging in, or is again becoming engaged in, municipal securities business.

The Board strongly believes that the No Business Exemption is best suited to dealers that do not intend on engaging in municipal securities business for the foreseeable future. Thus, a dealer that qualifies for the No Business Exemption in any particular calendar quarter but intends to engage in municipal securities business in subsequent quarters should consider carefully whether the burden of having to comply with the Look Back Requirement—in particular, the burden of recreating at least two full years of records under Rule G-8(a)(xvi)—and the risk of unknowingly becoming banned from municipal securities business as a result of a contribution made to an issuer official during such exemption period outweigh the short-term benefit of not having to create and maintain such records and not having to submit Form G-37/G-38 on a current basis. The Board advises any dealer that engages in municipal securities business after having invoked the No Business Exemption that it should be prepared to evidence to the appropriate regulatory agency charged with enforcing Board rules that it has fully complied with its strict obligations to create the required records and to disclose on a timely basis the required information under the Look Back Requirement.

### iv. No Effect on Disclosure and Recordkeeping Obligations Relating to Consultants

If, in any quarter during which a dealer qualifies for the No Business Exemption, that dealer uses a consultant to attempt to obtain municipal securities business, it would be required under amended Rule G-37(e)(ii)(B) to submit Form G-37/G-38 to the Board but would only be required to report information relating to such use of consultants as required under Rule G-38. Such a required submission of Form G-37/G-38 in any quarter would not cause the No Business Exemption or the related Form G-37x submission to lapse unless the dealer in fact engages in municipal securities business. Of course, a dealer that has engaged a consultant in an attempt to obtain municipal securities business from an

issuer should consider carefully the advisability of invoking (or continuing to invoke) the No Business Exemption since, if the dealer is successful in obtaining such business, it would need to comply with the strict requirements of the Look Back Requirement and, in particular, would need to confirm that it has been banned from undertaking municipal securities business with such issuer prior to undertaking that business.

v. No Effect on Two-Year Ban on Municipal Securities Business or Prohibition of Certain Solicitations and Coordination of Contributions Under Rule G-37 (b) and (c)

The No Business Exemption would not provide an exemption from the operation of sections (b) and (c) of Rule G-37.<sup>14</sup> thus, under certain circumstances, a political contribution (other than an MFP's *de minimis* contribution) to an official of an issuer that was not disclosed on Form G-37/G-38 and not recorded under Rule G-8(a)(xvi) by virtue of the No Business Exemption could trigger the ban on municipal securities business with such issuer under section (b). In addition, solicitation or coordination of contributions to an official of an issuer with which the dealer is seeking to engage in municipal securities business would continue to be prohibited under section (c) even if the No Business Exemption is then in effect. Dealers that qualify for the No Business Exemption but that are considering future engagements in municipal securities business should be cognizant of the continuing applicability of sections (b) and (c) of the rule.

b. No Information Exemption for Dealers With No Information to Report in a Quarter

Amended Rule G-37(e)(ii)(A)(1) would codify the previously recognized No Information Exemption to the quarterly Form G-37/G-38 submission requirement.<sup>15</sup> The proposed amendment provides that a dealer

<sup>14</sup> Section (b) provides that no dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, an MFP or PAC controlled by the dealer or an MFP. Section (c) provides that no dealer or MFP shall solicit any person or PAC to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business.

<sup>15</sup> See Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994), Question and Answer No. 34. See also *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15-16, and "Instructions for Completing and Filing Form G-37/G-38," reprinted in *MSRB Reports*, Vol. 16, No. 1 (January 1996) at 11.

would not be required to send Form G-37/G-38 to the board for any calendar quarter in which *all* of the following conditions apply: (1) the dealer has not engaged in municipal securities business, (2) the dealer has no reportable political contributions to issuer officials or payments to state and local political parties, and (3) the dealer has no reportable use of consultants. The No Information Exemption would continue to obviate the need for a dealer to submit a Form G-37/G-38 that reflects no reportable activity under all category headings. A dealer, however, would be required to send Form G-37/G-38 to the Board in any subsequent calendar quarter in which it does not qualify for the No Information Exemption, unless the dealer qualifies for, and invokes, the No Business Exemption.

c. Technical Amendments

Amended Rule G-37(e)(i) would consolidate the Form G-37/G-38 submission procedures that are currently set forth separately in paragraphs (i) and (ii) of Rule G-37(e) and in Rule G-38(d). Amended Rule G-38(d) would include certain related amendments.

In addition, the existing exemption from the reporting requirements under Rule G-37 for *de minimis* contributions made by MFPs and non-MFP executive officers to officials of issuers<sup>16</sup> and to state and local political parties<sup>17</sup> is effected by a cross-reference to the recordkeeping requirements of Rule G-8(a)(xvi). To clarify the nature of such *de minimis* exemption, amended Rule G-37(e)(i)(A) incorporates into the language of Rule G-37, but does not change, the specific requirements of the *de minimis* exemption.

d. Amendments Relating to Records of Form G-37x

Section H of Rule G-8(a)(xvi) would be amended to require that dealers maintain copies of any Forms G-37x submitted to the Board and the corresponding records of sending. Amended Rule G-9(a)(viii) would require that copies of Forms G-37x be

<sup>16</sup> A *de minimis* contribution to an official of an issuer not requiring disclosure consists of a contribution made by an MFP or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed \$250 per election.

<sup>17</sup> A *de minimis* payment to a political party of a state or political subdivision not requiring disclosure consists of a payment made by an MFP or a non-MFP executive officer to a political party of a state or political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed \$250 per year.

preserved for the period during which they are effective and for at least six years following the end of such effectiveness.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.<sup>18</sup> The Board believes that the proposed rule change will provide relief to certain dealers that do not engage in municipal securities business from the burden of compliance with the reporting requirements of Rule G-37 and the recordkeeping requirements of Rule G-8(a)(xvi) under circumstances where the effectiveness of the rules would not be impaired. The proposed rule change will also assist the enforcement agencies in maintaining accurate records of dealers that are qualified to invoke the No Business Exemption and of dealers that are required to create records and make disclosures pursuant to the Look Back Requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed rule change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

<sup>18</sup> Section 15B(b)(2)(c) states that the rules of the Board 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.

B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-97-12 and should be submitted by January 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-22 Filed 1-4-99; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No 34-40848; File No. SR-MSRB-98-12]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of an Interpretative Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

December 28, 1998.

On November 20, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-98-12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A)<sup>3</sup> of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change consisting of an interpretive notice regarding electronic delivery and receipt of information by brokers, dealers and municipal securities dealers (the "Notice"). The interpretive notice is as follows:

#### Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

On May 9, 1996, the Commission issued an interpretative release expressing its views on the use of electronic media for a delivery of information by, among others, brokers and dealers.<sup>4</sup> The Commission stated that brokers, dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the Commission's October 1995 interpretive release on the use of electronic media for delivery purposes.<sup>5</sup> The Commission also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Board is publishing this notice to address the use of brokers, dealers and municipal securities dealers ("dealers") of electronic media to a deliver and receive information under Board rules.<sup>6</sup> The Board

<sup>1</sup> 15 U.S.C. 28s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> See Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (the "1996 Release").

<sup>5</sup> See Securities Act Release No. 7233, Exchange Act Release No. 36345 (October 6, 1995), 60 FR 53458 (October 13, 1995) (the "1995 Release" and, together with the 1996 Release, the "Commission Releases").

<sup>6</sup> The Commission has approved similar interpretive notices filed by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. See Securities Exchange Act Release No. 39356 (November 25, 1997), 62 FR 64421 (December 5, 1997) (Notice of Members of the National Association of Securities Dealers, Inc.); Securities Exchange Act Release No. 38731 (June

will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the Commission Releases and summarized below.<sup>7</sup> Dealers also may receive consents and acknowledgments from customers electronically in satisfaction of required written consents and acknowledgments. Furthermore, the Board believes that the standards applied by the Commission by communications with customers should also apply to communications among dealers and between dealers and issuers. However, although it is the Board's goal ultimately to permit dealers to make required submissions of materials to the Board electronically if possible, this notice does not affect existing requirements for the submission of materials to the Board, its designees and certain other entities to which information is required to be delivered under Board rules.<sup>8</sup>

<sup>10</sup>, 1997), 62 FR 32848 (June 17, 1997) (Memo of the New York Stock Exchange).

<sup>7</sup> The Board also reminds dealers that the Commission indicated in the 1996 Release that dealers may fulfill their obligation to deliver to customers, upon request, preliminary official statements and final official statement in connection with primary offering of municipal securities subject to Commission Rule 15c2-12 by electronic means, subject to the guidelines set forth in the 1996 Release. See 1996 Release, *supra* note 4 at n. 47.

<sup>8</sup> For example, this notice does not apply to any requirements that dealers supply the Board with written information pursuant to Board Rules A-12, A-14, A-15, G-36, G-37 and G-38. The Board has begun the planning process for electronic submission or information required under Rule A-15 and of Form G-37/G-38 under Rules G-37 and G-38. At such time as electronic submission becomes available, the Board will publish notice thereof and of the procedures to be used for such submission. Although submission of Forms G-36(OS) and G-36(ARD) under Rule G-36 could also be made electronically by means similar to those which the Board may develop for Form G-37/G-38, such electronic submission is complicated by the requirement that Forms G-36(OS) and G-36(ARD) be accompanied by an official statement or advance refunding document, as appropriate. Given the current debate and lack of consensus among the various sectors of the municipal securities industry regarding electronic formatting of disclosure materials, and since the Board does not have the authority to dictate the format of issuer documents, the Board believes that any further action regarding electronic submissions under Rule G-36 should await resolution of these issues. Finally, the Board does not at this time anticipate permitting electronic submission of information required under Rules A-12 and A-14 since such information must be accompanied by payment of certain required fees.

Electronic submission of information under Rule G-14 will continue to be governed by Rule G-14 and associated Transaction Reporting Procedures. In addition, this notice does not alter the current submission standards applicable to the Board's Continuing Disclosure Information (CDI) System of the Municipal Securities Information Library<sup>®</sup> (MSIL<sup>®</sup>) system. The Municipal Securities Information Library and MSIL are registered trademarks of the Board.

Furthermore, submission of information to the Board's designees or certain other designated entities under Board rules must continue to be done in accordance with the procedures established by such designees or other entities. Board rules in

<sup>19</sup> 17 CFR 200.30-3(a)(12).