

No. 16-\_\_\_\_

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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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TENNESSEE REPUBLICAN PARTY,

*Petitioner,*

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, and  
MUNICIPAL SECURITIES RULEMAKING BOARD,

*Respondents.*

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**PETITION FOR REVIEW OF FINAL RULE OF  
THE MUNICIPAL SECURITIES RULEMAKING BOARD APPROVED BY  
THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

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The Tennessee Republican Party hereby petitions this Court, pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure, Section 25(a) of the Exchange Act, 15 U.S.C. §78y(a), and Sections 702 and 706 of the Administrative Procedure Act, 5 U.S.C. §§702 and 706, for review of the United States Securities and Exchange Commission's ("Commission" or "SEC") approval of a rule proposed by the Municipal Securities Rulemaking Board ("MSRB") to restrict political contributions made by municipal advisors or dealers.

The Commission formally approved this rule (the “MSRB Political Contribution Rule”) on February 17, 2016.<sup>1</sup> The MSRB Regulatory Notice announcing the Rule’s approval, a copy of which is attached hereto, was issued on February 17, 2016. *See* Mun. Secs. Rulemaking Bd., *Amendments to MSRB Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business and Related Amendments are Deemed Approved Under the Securities Exchange Act of 1934* (Feb. 17, 2016) (“MSRB Notice”).

This action is timely and satisfies the statutory requirements for challenging the MSRB Political Contribution Rule. *See* 15 U.S.C. §78y(a)(1). Petitioner Tennessee Republican Party’s principal place of business is 2424 21st Avenue, Suite 200, Nashville, Tennessee 37212, which is within the Sixth Circuit. The Tennessee Republican Party is adversely affected by the MSRB Political Contribution Rule, which was proposed and approved pursuant to 15 U.S.C. §78s(b). The Rule violates the First Amendment rights of both the party and its members. This petition is filed within sixty days of the Commission’s approval. And the Tennessee Republican Party’s objections to the MSRB Political Contribution Rule were “urged before the Commission.” *Id.* §78y(c)(1); *see also Blount v. SEC*, 61 F.3d 938, 940 (D.C. Cir.

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<sup>1</sup> An MSRB rule proposal is “deemed to have been approved by the Commission” where, as here, the “Commission does not approve or disapprove the proposed rule change” within 45 days of publishing notice of the proposal. 15 U.S.C. §78s(b)(2)(D)(i).

1995) (petitioner’s argument is “urged” if raised in a comment to the Commission during the rulemaking process). The Tennessee Republican Party filed a comment with the SEC in opposition to this Rule, explaining that it is both unlawful and unconstitutional.

The MSRB Political Contribution Rule is unlawful as it is *ultra vires*. Congress did not empower the SEC, let alone the MSRB, to regulate political contributions when it granted generic authority to establish rules “designed to prevent fraudulent and manipulative acts and practices[.]” 15 U.S.C. §78o-4(b)(2)(C). Instead, campaign finance regulation has long been the exclusive province of Congress and the Federal Election Commission (“FEC”). And while Congress has delegated authority to the FEC discretion with respect to many aspects of campaign finance regulation, Congress has consistently reserved for itself the power to set contribution limits. As such, Congress’ comprehensive regime of political contribution limits forecloses the Commission’s—and the MSRB’s—most recent effort to regulate the same conduct. Moreover, Congress recently reemphasized that the SEC has no role in regulating political contributions, stating in the Consolidated Appropriations Act of 2016 that there shall be no funds made available for the SEC “to finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt

organizations, or dues paid to trade associations.” Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, §707, 129 Stat. 2242.

The MSRB Political Contribution Rule also violates the First Amendment by forcing municipal advisors or dealers (and their employees) to choose between exercising their constitutional right to support candidates through political contributions and continuing to provide advisory and dealer services. A municipal advisor or dealer (and its employees) may only do the latter by forgoing the former. The Supreme Court, however, has recently confirmed that the only legitimate governmental interest sufficient for restricting political contributions is preventing *quid pro quo* corruption. *See McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014). The MSRB Political Contribution Rule fails to satisfy this standard. Indeed, the mere spending of “money in connection with elections, but not in connection with an effort to control the exercise of an officeholder’s official duties, does not give rise to such *quid pro quo* corruption.” *Id.* at 1450. Moreover, the justifications on which the Commission—along with the MSRB—relies are found nowhere in Supreme Court’s case law. *See* MSRB Notice at 4 (“the purpose of Rule G-37 ... includes the protection of municipal entities and obligated persons”); *see also id.* at 25. As such, the Supreme Court’s recent case law forecloses the Commission’s—and the MSRB’s—most recent effort to limit political contributions.

In sum, the MSRB Political Contribution Rule is doomed three times over. First, both the Commission and the MSRB lack the statutory authority to alter or supplement Congress' comprehensive contribution limits regime. Second, the Rule vastly exceeds the Commission's and the MSRB's authority to prevent "fraudulent and manipulative acts or practices." Third, the Rule restricts constitutionally protected conduct in a manner that is not sufficiently tailored to serve a sufficiently important government interest.

The Tennessee Republican Party thus respectfully asks this Court to hold that the Rule exceeds the Commission's—and the MSRB's—statutory authority, is arbitrary and capricious, and violates the First Amendment; to set aside and vacate the Rule; to enjoin the Commission—and the MSRB—from implementing and enforcing the Rule's requirements; and to grant such other relief as the Court deems appropriate.

Respectfully submitted,

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*Counsel for Petitioner  
Tennessee Republican Party*

Dated: April 12, 2016

## CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April 2016, I sent the foregoing  
Petition for Review by overnight delivery to:

Hon. Mary Jo White  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Lynnette Kelly  
Municipal Securities Rulemaking Board  
1300 I Street, NW  
Suite 1000  
Washington, DC 20005

/s/ H. Christopher Bartolomucci

H. Christopher Bartolomucci



# Regulatory Notice

2016-06

**Publication Date**

February 17, 2016

**Stakeholders**

Municipal Securities  
Dealers, Municipal  
Advisors, Issuers

**Notice Type**

Regulatory  
Announcement

**Effective Date**

August 17, 2016

**Category**

Fair Practice

**Affected Rules**

[Rule G-8](#), [Rule G-9](#),  
[Rule G-37](#)

## Amendments to MSRB Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business and Related Amendments are Deemed Approved Under the Securities Exchange Act of 1934

### Overview

The Municipal Securities Rulemaking Board's (MSRB) amendments to MSRB Rule G-37, on political contributions and prohibitions on municipal securities business, and related amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records, and Forms G-37 and G-37x were deemed approved under Section 19(b)(2)(D) of the Securities Exchange Act of 1934 (the Act or Exchange Act) on February 13, 2016.<sup>1</sup>

Once effective, amended Rule G-37 will extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business. The amendments are designed to address potential "pay-to-play" practices by municipal advisors consistently with the MSRB's existing regulation of dealers.

The amendments to Rule G-37, Rules G-8 and G-9, and Forms G-37 and G-37x will become effective on August 17, 2016.

Questions about this notice may be directed to Michael L. Post, General Counsel – Regulatory Affairs, Sharon Zackula, Associate General Counsel, or, Saliha Olgun, Assistant General Counsel, at 202-838-1500.

<sup>1</sup> Section 19(b)(2)(D) of the Exchange Act provides, in pertinent part, that "[a] proposed rule change shall be deemed to have been approved by the Commission, if (i) the Commission does not approve or disapprove the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A)," and Section 19(b)(2)(A) of the Exchange Act describes, unless extended, a 45-day period following the Commission's publication of the notice of a proposed rule change. 15 U.S.C. 78s(b)(2)(A) & (D).



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## Summary of Amended Rule G-37

Amended Rule G-37 will extend the core standards under Rule G-37 to municipal advisors by:

- Prohibiting a municipal advisor from engaging in municipal advisory business with a municipal entity for two years, subject to exceptions, following the making of a contribution to certain officials of the municipal entity by the municipal advisor, a municipal advisor professional (MAP) of the municipal advisor, or a political action committee (PAC) controlled by the municipal advisor or an MAP of the municipal advisor (a “ban on municipal advisory business”);<sup>2</sup>
- Prohibiting municipal advisors and MAPs from soliciting contributions, or coordinating contributions, to certain officials of a municipal entity with which the municipal advisor is engaging, or seeking to engage, in municipal advisory business;<sup>3</sup>
- Requiring a nexus that links the influence that may be exercised by an official of a municipal entity – the influence in the awarding of business to the municipal advisor (or the dealer, municipal advisor or investment adviser clients of a defined municipal advisor third-party solicitor)<sup>4</sup> – and the contributions received by the official;
- Prohibiting municipal advisors and certain MAPs from soliciting payments, or coordinating payments, to political parties of states and localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business;
- Prohibiting municipal advisors and MAPs from committing indirect violations of amended Rule G-37;

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<sup>2</sup> The amendments to Rule G-37 include a number of new terms, which are defined in amended Rule G-37(g). For the most part, the terms are discussed in context.

“Municipal advisor,” defined in amended Rule G-37(g)(viii), will mean a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder. The terms “municipal entity,” “municipal advisory business” and “municipal advisor professional” will be defined in amended Rule G-37(g) in, respectively, subsections (xi), (ix) and (iii). A PAC controlled by a dealer or a municipal finance professional of the dealer; a municipal advisor or an MAP of the municipal advisor; or a municipal advisor third-party solicitor or an MAP of the municipal advisor third-party solicitor is referred to in this notice as a “controlled PAC.”

<sup>3</sup> The term “official of a municipal entity” will be defined in amended Rule G-37(g)(xvi).

<sup>4</sup> The term “municipal advisor third-party solicitor” will be defined in amended Rule G-37(g)(x).

- Requiring quarterly disclosures to the MSRB of certain contributions and related information;
- Providing for certain exemptions from a ban on municipal advisory business; and
- Extending applicable interpretive guidance under Rule G-37 to municipal advisors.

In addition, if a dealer or a municipal advisor engages a municipal advisor third-party solicitor, following the making of a contribution to certain officials of the municipal entity by the municipal advisor third-party solicitor, an MAP of the municipal advisor third-party solicitor, or controlled PAC of the municipal advisor third-party solicitor, amended Rule G-37 will prohibit the dealer or municipal advisor that retained the municipal advisor third-party solicitor from engaging in municipal securities business or municipal advisory business, as applicable, with the municipal entity for two years following the making of the contribution.

Also, an entity that is both a dealer and a municipal advisor (dealer-municipal advisor) potentially may be subject to a cross-ban under amended Rule G-37. The cross-ban may apply to the dealer-municipal advisor's municipal securities business, municipal advisory business or both municipal securities business and municipal advisory business, so long as the official receiving the contribution has, with respect to each type of business, influence in the awarding of such business.

The related amendments to Rule G-8 will add a new paragraph to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons that apply to dealers and their associated persons. Amended Rule G-9 will require municipal advisors to preserve for six years the records required to be made in amended Rule G-8. Forms G-37 and G-37x will be amended to permit both dealers and municipal advisors to make the disclosures required under the amended rule on such forms, and, for dealer-municipal advisors, to make the required disclosures on a single form.<sup>5</sup>

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<sup>5</sup> The MSRB reminds dealers that Rule G-37 currently applies to certain activities of dealers that, as a result of SEC rulemaking regarding the registration of municipal advisors, are now also defined as municipal advisory activities. *See generally*, 17 CFR 240.15Ba1-1 to 17 CFR 240.15Ba1-8 and related rules (collectively, "SEC Final Rule").

Specifically, current Rule G-37(g)(iv), defining the term "municipal finance professional," provides in subparagraph (A) that an associated person is an MFP if he or she is primarily "engaged in municipal securities representative activities, as defined in rule G-3(a)(i). . . ." Such "municipal securities representative activities" may include the provision of "financial

**Purpose**

Amended Rule G-37(a), like current Rule G-37(a), will set forth the purpose of Rule G-37. The amendments to this section will reflect the amended rule's expanded scope, which includes the protection of municipal entities and obligated persons by subjecting municipal advisors to a ban on municipal advisory business upon the making of certain contributions and requiring disclosures of certain political contributions and related information. Section (a) will reflect the first use of a new defined term "municipal entity," which replaces the term "issuer" throughout the amended rule.<sup>6</sup>

**Municipal Advisors that Act as Solicitors on Behalf of a Third Party**

Municipal advisors that undertake a solicitation of a municipal entity on behalf of a third-party dealer, municipal advisor or investment adviser engage in a distinct type of municipal advisory business that warrants additional tailoring under amended Rule G-37. To extend the policies contained in Rule G-37 to this type of municipal advisor, amended Rule G-37 will add a new defined term, "municipal advisor third-party solicitor." A municipal advisor third-party solicitor will be defined in amended Rule G-37(g)(x) as a municipal advisor that:

is currently soliciting a municipal entity, is engaged to solicit a municipal entity or is seeking to be engaged to solicit a municipal entity for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

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advisory or consultant services for issuers in connection with the issuance of municipal securities." See Rule G-3(a)(i)(A)(2). Most, and perhaps all, of these financial advisory and consultant services are also municipal advisory activities under Section 15B(e)(4) of the Exchange Act and the SEC Final Rule. See 15 U.S.C. 78o-4(e)(4). Moreover, currently, under Rule G-37, if a ban on municipal securities business is triggered, the ban encompasses the dealer's provision of those same financial advisory and consultant services. Current Rule G-37 applies equally to dealer-municipal advisors (in their capacity as dealers).

<sup>6</sup> "Municipal entity" will be defined in amended Rule G-37(g)(xi) and will have the meaning specified in Section 15B(e)(8) of the Act (15 U.S.C. 78o-4(e)(8)), and the rules and regulations thereunder. The term will include certain college savings plans ("529 plans") and certain entities that do not issue municipal securities, such as various types of state or local government-sponsored or established plans or pools of assets, such as local government investment pools, public employee retirement systems, public employee benefit plans and public pension plans (including participant directed plans and 403(b) and 457 plans).

As used in the “municipal advisor third-party solicitor” definition, the terms “solicit” and “soliciting” will mean:

to make, or making, respectively, a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement by the municipal entity of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for municipal securities business, municipal advisory business or investment advisory services; provided, however, that it does not include advertising by a dealer, municipal advisor or investment adviser.<sup>7</sup>

As a result, a municipal advisor that provides advice to or on behalf of a municipal entity or obligated person may, depending on its other conduct, also be a municipal advisor third-party solicitor under amended Rule G-37(g)(x). Additionally, a municipal advisor may at one point in time also be a municipal advisor third-party solicitor and at another point in time may no longer fall within the definition.

Under amended Rule G-37, the engagement of a municipal advisor third-party solicitor will have special implications for a regulated entity client (*i.e.*, either a dealer client or municipal advisor client) that engages a municipal advisor third-party solicitor to solicit a municipal entity on its behalf.<sup>8</sup>

### **Municipal Finance Professionals and Municipal Advisor Professionals**

Amended Rule G-37 will preserve for dealers, and extend to municipal advisors in an analogous manner, the provision that a contribution by a person who is a municipal finance professional, or MFP, of a dealer may trigger a ban on municipal securities business as to the dealer in certain cases. Thus, for municipal advisors, contributions by certain persons employed or otherwise affiliated with a municipal advisor, referred to as

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<sup>7</sup> Amended Rule G-37(g)(xix). The terms “municipal advisor third-party solicitor,” “solicit” and “soliciting” will be consistent with the terms “municipal advisor” and “solicitation of a municipal entity or obligated person” as defined in the Exchange Act and Exchange Act rules and regulations. See Section 15B(e)(4) of the Exchange Act, 15 U.S.C. 78o-4(e)(4) (defining the term “municipal advisor”); Section 15B(e)(9) of the Exchange Act, 15 U.S.C. 78o-4(e)(9) (defining the term “solicitation of a municipal entity or obligated person”); and Exchange Act Rules 15Ba1-1(d), (e) and (n) defining the terms “municipal advisor,” “municipal advisory activities” and “solicitation of a municipal entity or obligation person,” respectively.)

<sup>8</sup> The term “regulated entity,” will be defined in amended Rule G-37(g)(i) to mean a dealer or municipal advisor, but the term will exclude a regulated entity’s associated persons.

municipal advisor professionals, or MAPs, may trigger a ban on municipal advisory business as to the municipal advisor in certain cases.

Municipal Finance Professionals. Amended Rule G-37 will preserve the substance of the current defined term “municipal finance professional,” but will renumber the definition as amended Rule G-37(g)(ii) and make a number of technical amendments. Thus, as under current Rule G-37, an associated person of a dealer will be a “municipal finance professional” if he or she engages in the activities or functions outlined in one or more of the five subparts of the definition. In addition, if designated by a dealer as an MFP in the dealer’s records, an associated person will be deemed an MFP and will retain the designation for one year after the last activity or position that gave rise to the designation.

Municipal Advisor Professionals. Amended Rule G-37(g)(iii) will define as “municipal advisor professionals” the associated persons of a municipal advisor that will be subject to amended Rule G-37. The term “municipal advisor professional” will be analogous to the amended term “municipal finance professional.” Five types or categories of MAPs will be described in paragraphs (A) through (E) of amended Rule G-37(g)(iii), respectively: “municipal advisor representative,” “municipal advisor solicitor,” “municipal advisor principal,” “municipal advisor supervisory chain person,” and “municipal advisor executive officer.”

Under amended Rule G-37(g)(iii), an MAP will be any associated person of a municipal advisor engaged in the following activities:

(A) Any “municipal advisor representative” – any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);<sup>9</sup>

(B) Any “municipal advisor solicitor” – any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);

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<sup>9</sup> Rule G-3(d)(i)(A), defines a “municipal advisor representative” as “a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor’s behalf, other than a person performing only clerical, administrative, support or similar functions.”

(C) Any “municipal advisor principal” – any associated person who is both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i));<sup>10</sup> and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);

(D) Any “municipal advisor supervisory chain person” – any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, 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 advisory activities, as required by 17 CFR 240.15Ba1-1(d)(4)(i); or

(E) Any “municipal advisor executive officer” – any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

Similar to the provision for MFPs, amended Rule G-37(g)(iii) also will deem a person who is designated by a municipal advisor as an MAP in the municipal advisor’s records as an MAP, and the MAP will retain the designation for one year after the last activity or position that gave rise to the designation.

The chart below illustrates the similarities between the terms “municipal finance professional” and “municipal advisor professional” in amended Rule G-37(g)(ii) and (iii).

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<sup>10</sup> Rule G-3(e)(i) defines the term “municipal advisor principal” to mean “a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.”

The term “municipal advisory activities” (used in the definition of “municipal advisor principal”) is defined in Rule D-13.

Types of Municipal Finance Professionals	Types of Municipal Advisor Professionals
“municipal finance representative”	“municipal advisor representative”
“dealer solicitor”	“municipal advisor solicitor”
“municipal finance principal”	“municipal advisor principal”
“dealer supervisory chain person”	“municipal advisor supervisory chain person”
“dealer executive officer”	“municipal advisor executive officer”

### Ban on Business

Amended Rule G-37(b) will preserve, and extend to municipal advisors on generally analogous terms, the imposition of a ban on business that might have otherwise been awarded as a *quid pro quo* for a contribution, or at least as to which the appearance of a *quid pro quo* might have arisen. However, to make clear for each type of regulated entity the nexus between a contribution to an official and the type of business as to which the official may exercise influence, amended Rule G-37(b) will set forth the relevant tailored provision in separate paragraphs for dealers, municipal advisors that are not, at the time of the triggering contribution, municipal advisor third-party solicitors, and municipal advisor third-party solicitors. Thus, amended Rule G-37(b)(i)(A) will apply to dealers, amended Rule G-37(b)(i)(B) will apply to municipal advisors that are not, at the time of the triggering contribution, municipal advisor third-party solicitors, and amended Rule G-37(b)(i)(C)(1) will apply to municipal advisor third-party solicitors.

Whether a contribution will trigger a ban on municipal securities business, a ban on municipal advisory business or a ban on both types of business (any such ban, a “ban on applicable business”) for a dealer, municipal advisor or dealer-municipal advisor generally will depend on the identity of the person who made the contribution, the type of influence that can be exercised by the official to whom the contribution was made and whether an exclusion from the ban will apply.

### Persons from Whom Contributions Could Trigger a Ban on Business

Dealers. Amended Rule G-37(b)(i)(A) (renumbered from Rule G-37(b)(i)), will retain the principle that contributions by three types of contributors — a dealer, an MFP of the dealer or a controlled PAC — may trigger a ban on municipal securities business for the dealer.

Municipal Advisors that are not Municipal Advisor Third-Party Solicitors. Amended Rule G-37(b)(i)(B) will parallel the requirements applicable to dealers in amended Rule G-37(b)(i)(A). Under amended Rule G-37(b)(i)(B),

contributions by three types of contributors — a municipal advisor that is not, at the time of the contribution, a municipal advisor third-party solicitor, an MAP of the municipal advisor or a controlled PAC — may trigger a ban on municipal advisory business for the municipal advisor.

Municipal Advisor Third-Party Solicitors. Amended Rule G-37(b)(i)(C)(1) will set forth, for municipal advisor third-party solicitors, requirements that parallel the requirements in amended Rule G-37(b)(i)(A) and amended Rule G-37(b)(i)(B). Under amended Rule G-37(b)(i)(C)(1), contributions by three types of contributors — the municipal advisor third-party solicitor, an MAP of the municipal advisor third-party solicitor or a controlled PAC — may trigger a ban on municipal advisory business for the municipal advisor third-party solicitor.

Clients of a Municipal Advisor Third-Party Solicitor that are Dealers or Municipal Advisors. Amended Rule G-37(b)(i)(C)(2) will set forth special provisions for dealers or municipal advisors that are clients of a municipal advisor third-party solicitor. If a dealer or municipal advisor engages a municipal advisor third-party solicitor to solicit a municipal entity on its behalf, three additional types of contributors may trigger a ban on municipal securities business as to a dealer client, or a ban on municipal advisory business as to a municipal advisor client. Clause (b)(i)(C)(2)(a) will apply to dealer clients of a municipal advisor third-party solicitor<sup>11</sup> and clause (b)(i)(C)(2)(b) will apply to municipal advisor clients (including municipal advisor third-party solicitor clients) of a municipal advisor third-party solicitor.<sup>12</sup>

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<sup>11</sup> A dealer is generally prohibited under Rule G-38 from making payments to a third-party solicitor to solicit municipal securities business on behalf of the dealer. However, amended Rule G-37(b)(i)(C)(2)(a) will apply in the limited cases where payments to a third-party solicitor are permitted under Rule G-38 as well as in cases where a dealer engages a municipal advisor third-party solicitor in violation of Rule G-38.

<sup>12</sup> Rule G-38 does not apply to municipal advisors unless they are dealer-municipal advisors. However, municipal advisors that are not municipal advisor third-party solicitors will be subject to Rule G-42 as of June 23, 2016. Under Rule G-42(e)(i)(E), non-solicitor municipal advisors will be prohibited from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities subject to limited exceptions, which include reasonable fees paid to another municipal advisor registered as such with the SEC and the MSRB for making such a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities.

Under each of the provisions, the additional types of contributors that may trigger a ban for the regulated entity will be the same: the engaged municipal advisor third-party solicitor; an MAP of the engaged municipal advisor third-party solicitor; and a controlled PAC.

The determination of whether a municipal advisor was engaged as a municipal advisor third-party solicitor by a regulated entity client will be determined based on the facts and circumstances. The absence of a writing evidencing the relationship, or the absence of particular terms in a writing evidencing the relationship, will not preclude a finding that a municipal advisor third-party solicitor was engaged by a regulated entity to solicit a municipal entity on its behalf within the meaning of amended Rule G-37(b)(i).<sup>13</sup>

#### Investment Adviser Clients of a Municipal Advisor Third-Party Solicitor.

Because Rule G-37 does not apply to investment advisers in their capacity as such, if an investment adviser engages a municipal advisor third-party solicitor to solicit on its behalf for an engagement to provide investment advisory services, the actions of the municipal advisor third-party solicitor will not trigger a ban on business for the investment adviser.<sup>14</sup>

#### Official of a Municipal Entity

Amended Rule G-37 will preserve, and extend to municipal advisors on generally analogous terms, the policy decision embodied in the previous “official of an issuer” definition that, in order for a contribution to an official to trigger a ban on business, that official must have selection influence with respect to the dealer or municipal advisor. In the case of a municipal advisor third-party solicitor, the official must have selection influence with respect to

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<sup>13</sup> Under amended Rule G-37(b)(i)(C)(1), to impose a ban on municipal advisory business for a municipal advisor third-party solicitor, the municipal advisor third-party solicitor will not be required to be specifically engaged, at the time of the contribution, to solicit the type of work over which the official to whom the contribution is made has selection influence. A municipal advisor third-party solicitor, by definition, may solicit for several different types of business (*i.e.*, municipal securities business, municipal advisory business and investment advisory services). Thus, a contribution to any official with the ability to influence the awarding of business to the solicitor’s *current or prospective* clients (*i.e.*, regulated entity clients and investment adviser clients) could trigger a ban for the municipal advisor third-party solicitor because there is at least an appearance of *quid pro quo* corruption when it makes a contribution to such an official.

<sup>14</sup> However, investment advisers continue to be subject to the requirements and prohibitions as provided in 17 CFR 275.206(4)-5.

the municipal advisor or its dealer, municipal advisor or investment adviser clients. Additionally, to take into account the expanded scope of the rule to protect municipal entities (which include, but are not limited to issuers), amended Rule G-37 will use a broader term, “official of a municipal entity,” (or “ME official”) instead of the term “official of an issuer.”<sup>15</sup>

To take into account the possibility that an ME official may have the ability to influence the hiring of a dealer, municipal advisor or investment adviser, or the hiring of two or more of such professionals, the term ME official will identify three categories of ME officials:

- An “official of a municipal entity with dealer selection influence” in amended Rule G-37(g)(xvi)(A), which will be substantively similar to the current term, “official of an issuer,” with the exception of the substitution of the broader term, “municipal entity,” in place of the term, “issuer;”<sup>16</sup>
- An “official of a municipal entity with municipal advisor selection influence” in amended Rule G-37(g)(xvi)(B), which is analogous to the term, “official of a municipal entity with dealer selection influence;” and
- An “official of a municipal entity with investment adviser selection influence” in amended Rule G-37(g)(xvi)(C), which is analogous to the term “official of a municipal entity with dealer selection influence” for dealers (and municipal advisor third-party solicitors on behalf of a dealer) and the term “official of a municipal entity with municipal advisor selection influence” for all municipal advisors.

The three-part structure of the definition of official of a municipal entity will provide the flexibility to establish, in the case of a contribution to an ME official, whether there is the required nexus between the ME official who receives the contribution (based upon his or her scope of influence) and the awarding of business that gives rise to a sufficient risk of *quid pro quo* corruption or the appearance of such corruption to warrant a two-year ban.

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<sup>15</sup> The term “official of a municipal entity” will be substituted generally for the term, “official of an issuer,” which will be deleted.

<sup>16</sup> Use of the term “municipal entity,” instead of the term “issuer,” in the definition of “official of a municipal entity with dealer selection influence” will expand the scope of the term to include certain non-issuers.

### Municipal Securities Business and Municipal Advisory Business

Amended Rule G-37(b)(i)(A) will provide that a dealer subject to a ban on business will be prohibited from engaging in specifically defined “municipal securities business” with the relevant municipal entity. This provision will be substantively unaffected by the amendments, except the term “municipal entity” will be substituted for the term “issuer” in amended Rule G-37(b)(i)(A) and in the term “municipal securities business,” which is incorporated in the ban provision. The definition of municipal securities business will not otherwise be substantively amended, and will be renumbered as amended Rule G-37(g)(xii).

Amended Rule G-37(b)(i)(B) and (b)(i)(C)(1) will provide that a municipal advisor subject to a ban on business will be prohibited from engaging in “municipal advisory business” with the relevant municipal entity. Notably, if the ban applies to a municipal advisor third-party solicitor, it will be prohibited from engaging in all types of municipal advisory business with the relevant municipal entity, including providing certain advice to the municipal entity *and* soliciting the municipal entity on behalf of *any* third-party dealer, municipal advisor or investment adviser. Amended Rule G-37(g)(ix) will define “municipal advisory business” to mean those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder.

### Ban on Business for Dealers; Ban on Business for Municipal Advisors

Under amended Rule G-37, a dealer or municipal advisor that is not a municipal advisor third-party solicitor may be subject to a ban on applicable business only when a triggering contribution is made to an ME official who can influence the awarding of the type of business in which that regulated entity engages.

A dealer that engages in municipal securities business, but not municipal advisory business, will be subject to a ban on municipal securities business only when a triggering contribution is made by any of the persons described in amended Rule G-37(b)(i)(A) or amended Rule G-37(b)(i)(C)(2) to an official of a municipal entity with dealer selection influence, defined in amended Rule G-37(g)(xvi)(A). (Although the ME official also may have influence as described in amended Rule G-37(g)(xvi)(B) and (C), regarding, respectively, the selection of municipal advisors and investment advisers, the broader scope of influence will be irrelevant in determining whether a dealer will be subject to a ban on municipal securities business.) Conversely, a contribution made by any of the persons described in amended Rule G-37(b)(i)(A) or

amended Rule G-37(b)(i)(C)(2), if made to an ME official that does not have dealer selection influence, will not trigger a ban for the dealer.

Similarly, a non-dealer municipal advisor that is not a municipal advisor third-party solicitor will be subject to a ban on municipal advisory business only when a triggering contribution is made by any of the persons described in amended Rule G-37(b)(i)(B) or amended Rule G-37(b)(i)(C)(2) to an ME official that is an official of a municipal entity with municipal advisor selection influence. Again, if the ME official has a broader scope of influence (*i.e.*, the ME official also has influence in the selection of dealers or investment advisers) the broader scope of influence is irrelevant in determining whether the municipal advisor will be subject to a ban on municipal advisory business.

A non-dealer municipal advisor third-party solicitor will be subject to a ban on municipal advisory business, including advising and soliciting, when a triggering contribution is made by any of the persons described in amended Rule G-37(b)(i)(C)(1) to any ME official, if the ME official has municipal advisor selection influence, dealer selection influence or investment adviser selection influence.<sup>17</sup>

If a municipal advisor does not also engage in municipal securities business, a ban on applicable business under amended Rule G-37 will subject the municipal advisor only to a ban on municipal advisory business.

#### Ban on Business for Dealer-Municipal Advisors

Amended Rule G-37 will treat dealer-municipal advisors as a single economic unit and subject such firms to an appropriately scoped ban on business. The scope of the ban on business will not be dependent on the particular line of business within the dealer-municipal advisor with which the person or controlled PAC that is the contributor may be associated. Instead, the scope of the ban on business will depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made. As a result, a dealer-municipal advisor could be subject, based on a single contribution, to: a ban on municipal securities business; a ban on municipal advisory business; or both.

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<sup>17</sup> Additionally, a contribution made by any of the persons described in amended Rule G-37(b)(i)(C)(2) to an official of a municipal entity with municipal advisor selection influence could potentially trigger a ban for the engaging municipal advisor third-party solicitor if the municipal advisor third-party solicitor engages another municipal advisor third-party solicitor under amended Rule G-37(b)(i)(C)(2)(b).

Further, any of the following entities or persons might trigger a ban on business for a dealer-municipal advisor if the entity or person makes a contribution that is a triggering contribution in the particular facts and circumstances: the dealer-municipal advisor; an MFP or an MAP of the dealer-municipal advisor; a controlled PAC; a municipal advisor third-party solicitor engaged on behalf of the dealer-municipal advisor; an MAP of such municipal advisor third-party solicitor; or a controlled PAC (controlled by the municipal advisor third-party solicitor or its MAP(s)).

#### Ban on Applicable Business for Dealer-Municipal Advisors

A dealer-municipal advisor could be subject to a ban on municipal securities business, in its capacity as a dealer, under the same terms that will apply to other dealers under amended Rule G-37(b)(i)(A) or amended Rule G-37(b)(i)(C)(2)(a). Similarly, a dealer-municipal advisor that is not a municipal advisor third-party solicitor could be subject to a ban on municipal advisory business under the same terms that will apply to non-dealer municipal advisors that are not municipal advisor third-party solicitors under amended Rule G-37(b)(i)(B) or amended Rule G-37(b)(i)(C)(2)(b). In addition, if a dealer-municipal advisor is a municipal advisor third-party solicitor, the dealer-municipal advisor could be subject to a ban on municipal advisory business under the same terms that will apply to other municipal advisor third-party solicitors under amended Rule G-37(b)(i)(C).

Cross-Ban. In two scenarios that arise only for dealer-municipal advisors, amended Rule G-37(b)(i)(D) will provide for the imposition of a “cross-ban” to dealer-municipal advisors to address *quid pro quo* corruption, or the appearance thereof, under such scenarios.

The cross-ban will be a ban on business applicable to a line of business within a dealer-municipal advisor (either its municipal securities business or municipal advisory business) as a result of a triggering contribution that emanated from a person or entity associated with the other line of business within the same dealer-municipal advisor. With a cross-ban, the scope of a ban on business that will apply to a dealer-municipal advisor will not be dependent on the particular line of business within the dealer-municipal advisor with which the person (*i.e.*, an MFP or an MAP) or the controlled PAC is associated. Instead, the scope of the ban on business will depend on the type of influence that can be exercised by the ME official to whom the triggering contribution is made.

In the first scenario, a contribution is made to an ME official with both dealer and municipal advisor selection influence by a person or entity associated with only one line of business within the dealer-municipal advisor. Amended

Rule G-37(b)(i)(D) will subject the dealer-municipal advisor to a ban not only on municipal securities business but also to a cross-ban on municipal advisory business because the contribution is to an ME official who can exercise influence as to the selection of the dealer-municipal advisor in both a dealer and municipal advisor capacity.

In the second scenario, a contribution is made to an ME official with only one type of influence (either dealer selection influence or municipal advisor selection influence, but not both) from a person or entity associated only with the line of business as to which the ME official does not have influence. For example, assume a triggering contribution is made to an official of a municipal entity with only dealer selection influence by an MAP of the dealer-municipal advisor who is not also an MFP. Amended Rule G-37(b)(i)(D) will subject the dealer-municipal advisor to a cross-ban on municipal securities business, but not to a ban on municipal advisory business because of the ME official's status: the ME official is not an official having influence over the selection of municipal advisors.<sup>18</sup> Similarly, if a triggering contribution is made to an official of a municipal entity with only municipal advisor selection influence by an MFP of the dealer-municipal advisor who is not an MAP, the dealer-municipal advisor will be subject only to a ban on municipal advisory business.

The table below shows the most common persons from whom a contribution could trigger a ban on municipal securities business, a ban on municipal advisory business, or both under amended Rule G-37. This table is for illustrative purposes only, and reference should be made to amended Rule G-37 for complete details.

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<sup>18</sup> Consistently, if a contribution is made by an MAP of a dealer-municipal advisor that is also a municipal advisor third-party solicitor to an ME official with only investment adviser selection influence, the dealer-municipal advisor will be subject to a ban on municipal advisory business, but, because of the status of the ME official, the dealer-municipal advisor will not be subject to a cross-ban on municipal securities business.

Persons From Whom a Contribution Could Trigger a Ban on Municipal Securities Business, Municipal Advisory Business, or Both					
Regulated Entity Subject to a Ban	I. Dealer	II. Municipal Advisor That Is Not a Municipal Advisor Third-Party Solicitor	III. Municipal Advisor Third-Party Solicitor (for purposes of this table, "MATP solicitor")	IV. Dealer-Municipal Advisor (for purposes of this table, "the firm")	
<b>Contributor</b>	the dealer	the municipal advisor	the MATP solicitor	the firm	
	an MFP of the dealer	an MAP of the municipal advisor	an MAP of the MATP solicitor	an MFP of the firm	an MAP of the firm
	a PAC controlled by the dealer	a PAC controlled by the municipal advisor	a PAC controlled by the MATP solicitor	a PAC controlled by the firm	
	a PAC controlled by an MFP of the dealer	a PAC controlled by an MAP of the municipal advisor	a PAC controlled by an MAP of the MATP solicitor	a PAC controlled by an MFP of the firm	a PAC controlled by an MAP of the firm
	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the dealer, the entities and persons in column III	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the municipal advisor, the entities and persons in column III	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the MATP solicitor, the entities and persons in this column above	If an MATP solicitor is engaged to solicit a municipal entity on behalf of the firm, the entities and persons in column III	

### Orderly Transition Period

A dealer that is subject to a ban on municipal securities business with an issuer is prohibited from engaging in new municipal securities business with that issuer, which includes pre-existing but non-issue-specific contractual undertakings. In such cases, to give the issuer the opportunity to receive the benefit of the work already provided and to find a replacement to complete the work performed by the dealer, as needed, the dealer may— notwithstanding the ban on business—continue to perform its pre-existing but non-issue-specific contractual undertakings subject to an orderly

transition to another entity to perform such business. The transition period should be as short a period of time as possible.

Amended Rule G-37(b)(i)(E) will codify this approach for dealers and incorporate a parallel provision for municipal advisors (provided that the municipal advisor is not engaged as a municipal advisor third-party solicitor with which they become subject to a ban on applicable business). Thus, a dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a municipal entity and, during the period of the engagement, becomes subject to a ban on applicable business, may continue to engage in the otherwise prohibited municipal securities business and/or municipal advisory business solely to allow for an orderly transition to another entity and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to its client. Amended Rule G-37(b)(i)(E), however, will not permit a municipal advisor third-party solicitor to continue soliciting a municipal entity as to which the municipal advisor third-party solicitor has become prohibited from engaging in municipal advisory business.<sup>19</sup> Amended Rule G-37 specifically will provide that the transition period must be as short a period of time as possible. In addition, if a dealer or municipal advisor avails itself of the orderly transition period, the ban on business with the municipal entity will be extended by the duration of the orderly transition period.

For municipal advisors, consistent with the approach taken with respect to dealers, the orderly transition period will apply only with respect to pre-existing but non-issue-specific contractual undertakings owed to municipal entities, which, as discussed previously, will be included in “new” municipal advisory business and subject to a ban. Also, the ban on municipal advisory business with the municipal entity will be extended by the length of the orderly transition period.

#### Excluded Contributions

Amended Rule G-37(b)(ii) will retain and consolidate in one provision the types of contributions that do not subject a dealer to a ban on applicable business, and will extend the same exclusions to municipal advisors. The first exclusion is for *de minimis* contributions (the “*de minimis* exclusion”), and

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<sup>19</sup> Any relevant contractual obligations of a municipal advisor third-party solicitor in its capacity as such are owed *not* to a municipal entity but to third-party regulated entities or investment advisers, and, therefore, the orderly transition period will not apply to municipal advisors acting as municipal advisor third-party solicitors.

the second and third exclusions are modifications of the two-year look-back provision that would otherwise apply.

*De Minimis Contributions.* Current Rule G-37(b)(i) provides that contributions made by an MFP to an issuer official for whom the MFP is entitled to vote do not trigger a ban on municipal securities business if such contributions do not, in total, exceed \$250 per election.<sup>20</sup> Amended Rule G-37 will retain the *de minimis* exclusion for MFPs of dealers in amended Rule G-37(b)(ii)(A), and extend this exclusion to MAPs of all municipal advisors, including MAPs of municipal advisor third-party solicitors. If a contribution by an MAP of a municipal advisor third-party solicitor meets the conditions for a *de minimis* exclusion, neither the municipal advisor third-party solicitor nor the dealer client or municipal advisor client for which it was engaged to solicit business will be subject to a ban.

*Other Excluded Contributions.* According to what is known as the “two-year look-back,” currently a dealer is generally subject to a ban on municipal securities business for a period of two years from the making of a triggering contribution, even if such contributions were made by a person, who, although an MFP of a dealer, was not an MFP of the dealer at the time he or she made the contribution. The two year look-back for MFPs will continue to apply to contributions by MFPs and will be extended to contributions by MAPs of municipal advisors, including municipal advisor third-party solicitors.<sup>21</sup>

Under Rule G-37, the two-year look-back is modified in two situations. Under current Rule G-37(b)(ii), contributions to an issuer official by an individual that is an MFP solely based on his or her solicitation activities for the dealer are excluded and do not trigger a ban on municipal securities business for the dealer, unless such MFP subsequently solicits municipal securities business from the same issuer. Amended Rule G-37 will relocate the exclusion applicable to such MFPs (*i.e.*, MFPs who will be “dealer solicitors”

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<sup>20</sup> For purposes of the *de minimis* exclusion, primary elections and general elections are separate elections. Therefore if an official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official may, within the scope of the *de minimis* exclusion, contribute up to \$250 to the official in a primary election and again contribute a separate \$250 to the same official in a general election. See MSRB Rule G-37 Interpretive Notice – Application of Rule G-37 to Presidential Campaigns of Issuer Officials (March 23, 1999).

<sup>21</sup> Similarly to the treatment under current Rule G-37, the ban on business for the dealer or municipal advisor would begin only when the individual who made the contribution becomes an MFP or MAP of the dealer or municipal advisor, as applicable.

as defined in amended Rule G-37(g)(ii)(B)) and extend the exclusion to MAPs who perform a similar solicitation function within a municipal advisor, and will be identified as “municipal advisor solicitors,” as defined in amended Rule G-37(g)(iii)(B)).

The third type of excluded contributions under Rule G-37 also will be retained as it applies to dealers and their MFPs and extended to apply to municipal advisors, including municipal advisor third-party solicitors, and the MAPs of both types of municipal advisors. Under current Rule G-37(b)(iii), contributions by MFPs who have that status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management committee (*i.e.*, those persons currently described in paragraphs (C), (D) and (E) of the definition of municipal finance professional in Rule G-37(g)(iv)), are excluded and do not trigger a ban on municipal securities business if such contributions are made more than six months before the contributor obtained his or her MFP status (including by designation). This exclusion will be renumbered as amended Rule G-37(b)(ii)(C) and will be applicable to the same types of MFPs, which will be denoted as “municipal finance principals,” “dealer supervisory chain persons,” and “dealer executive officers” as those terms are defined in amended Rule G-37(g)(ii)(C), (D) and (E). In addition, amended Rule G-37(b)(ii)(C) will treat contributions made, under the same circumstances, by the analogous categories of MAPs, as excluded contributions. The analogous categories of MAPs will be those MAPs that have MAP status solely by virtue of their supervisory or management-level activities, including persons serving on an executive or management committee (*i.e.*, “municipal advisor principals,” “municipal advisor supervisory chain persons,” and “municipal advisor executive officers” as defined in amended Rule G-37(g)(iii)(C), (D) and (E)).

#### **Prohibition on Soliciting and Coordinating Contributions**

Subsection (c)(i) of current Rule G-37 prohibits a dealer and an MFP of the dealer from soliciting any person or PAC to make any contribution or coordinating any contributions to an issuer official with which the dealer is engaging or is seeking to engage in municipal securities business. The amendments to Rule G-37(c)(i) will retain this prohibition with respect to dealers and their MFPs and extend it to municipal advisors and their MAPs. Further, to ensure a relevant nexus between the type of business in which a regulated entity engages or seeks to engage and its solicitation or coordination of any contributions to an ME official with the influence to award such business, amended Rule G-37(c)(i) will also distinguish contributions based on the type of influence held by the ME official.

Under amended Rule G-37(c)(i):

- A dealer and an MFP of the dealer will be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with dealer selection influence with which municipal entity the dealer is engaging, or is seeking to engage, in municipal securities business;
- A municipal advisor and an MAP of the municipal advisor will be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions, to an official of a municipal entity with municipal advisor selection influence with which municipal entity the municipal advisor is engaging, or is seeking to engage, in municipal advisory business.
- A municipal advisor third-party solicitor and an MAP of the municipal advisor third-party solicitor will be prohibited from soliciting any person or PAC to make any contribution, or from coordinating any contributions to:
  - An official of a municipal entity with dealer selection influence;
  - An official of a municipal entity with municipal advisor selection influence; and
  - An official of a municipal entity with investment adviser selection influence.

In the case of dealer-municipal advisors, consistent with the principle that dealer-municipal advisors should be treated as a single economic unit, amended Rule G-37(c)(i) will prohibit a dealer-municipal advisor, its MFPs, and its MAPs from soliciting any person or PAC to make any contribution or coordinating any contributions to an official of a municipal entity with dealer selection influence or municipal advisor selection influence with which municipal entity the dealer-municipal advisor is engaging or is seeking to engage in municipal securities business or municipal advisory business. If the dealer-municipal advisor is a municipal advisor third-party solicitor, the dealer-municipal advisor and its MAPs will also be prohibited from soliciting or coordinating contributions to an official with investment adviser selection influence.

Currently, Rule G-37(c)(ii) prohibits a dealer and three of the five categories of MFPs from soliciting any person or PAC to make any payment or coordinate any payments to a political party of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Under amended Rule G-37(c)(ii), the prohibition will be retained with respect

to dealers, and the three categories of MFPs also subject to the prohibition (*i.e.*, municipal finance representatives, dealer solicitors and municipal finance principals), and will be applied to municipal advisors and the three analogous categories of MAPs (*i.e.*, municipal advisor representatives, municipal advisor solicitors, and “municipal advisor principals”).

#### **Prohibition on Circumvention of Rule**

The amendments to Rule G-37 will retain section (d), which prohibits a dealer and any MFP of the dealer from doing, directly or indirectly, through or by any other person or means, any act which would result in a violation of the ban on municipal securities business or the prohibition on soliciting or coordinating contributions, and extend the prohibition to municipal advisors and their MAPs in connection with acts that would result in a violation of the ban on municipal advisory business or the prohibition on soliciting or coordinating contributions.

#### **Public Disclosure of Contributions and Other Information**

The amendments to Rule G-37(e) generally will retain the broad disclosure requirements for dealers. Amended Rule G-37(e) will require dealers to publicly disclose on Form G-37 information about certain: (i) contributions to officials of municipal entities; (ii) payments to political parties of states or political subdivisions; (iii) contributions to bond ballot campaigns; and (iv) information regarding municipal securities business with municipal entities. Substantially similar requirements will be applicable to municipal advisors, with one significant exception for municipal advisor-third-party solicitors.<sup>22</sup> Amended Rule G-37(e)(i)(C) will require municipal advisor third-party solicitors to list on Form G-37 the names of the third parties on behalf of which they solicited business as well as the nature of the business solicited. Amended Rule G-37(e) also will be amended to delete references to issuer officials and substitute references to officials of municipal entities, and to incorporate minor, non-substantive changes to improve the readability of the provision. Finally, although dealers are currently permitted to provide Form G-37 to the MSRB in paper or electronic form, amended Rule G-37(e)(iv) will require that dealers and municipal advisors make all submissions to the MSRB in electronic form.

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<sup>22</sup> In amended Rule G-37(e), the disclosure requirements will apply to contributions to officials of municipal entities, which is a potentially broader group of recipients than officials of an issuer, and the municipal securities business with “municipal entities” rather than “issuers.” The amendments to the disclosure requirements, however, will not limit the disclosure of contributions based on the relevant ME official’s type of influence. Rather, to further the purposes of the amendments, including permitting the public to scrutinize the political contributions of regulated entities and to address the appearance of *quid pro quo* corruption, the applicable disclosures will be required for contributions to *any* type of ME official.

Amended Rule G-37(f) will retain, and extend to municipal advisors, the ability to submit voluntary disclosures to the MSRB.

### **Definitions**

Amendments to Rule G-37(g) will add several new defined terms and modify terms currently defined in Rule G-37, generally to apply the appropriate provisions of Rule G-37 to municipal advisors and their associated persons. The discussion of significant new defined terms and significant amendments to current terms is set forth above in the context of the amendments.

New defined terms are: “regulated entity,” “municipal advisor professional,” “bank municipal advisor,” “municipal advisor,” “municipal advisory business,” “municipal advisor third-party solicitor,” “municipal entity,” “municipal solicitor,” “non-MAP executive officer,” and “solicit (or soliciting).” Several of the new defined terms for municipal advisors are analogous to terms in Rule G-37 that apply to dealers (*e.g.*, the term “non-MAP executive officer” will define the executive officers of a municipal advisor in a manner analogous to the definition of executive officers of a dealer in the term “non-MFP executive officer,” and the term “bank municipal advisor” will be defined in a manner analogous to the term, “bank dealer” under MSRB Rule D-8). The term “official of an issuer,” will be significantly modified, with three subsections and renamed “official of a municipal entity,” as discussed above.

As a result of the amendments, the defined terms “municipal finance professional,” “bond ballot campaign,” “issuer,” “payment,” “municipal securities business” and “contribution” in current Rule G-37(g) will be renumbered within amended section (g). None of these definitions will be substantively amended, except to substitute the term “municipal entity” for the term “issuer” where it occurs.

### **Operative Date**

Amended Rule G-37(h) will provide that a ban on applicable business under the rule will arise only from contributions made on or after the effective date of the amendments, which will be August 17, 2016. With respect to dealers and dealer-municipal advisors that are currently subject to the requirements of Rule G-37, any ban on municipal securities business that was already triggered before August 17, 2016, the effective date of the amendments, will remain in effect and end according to the provisions of Rule G-37 as in effect at the time of the contribution that triggered the ban.

## Exemptions

Amended Rule G-37(i) and (j) will preserve, and extend to municipal advisors on generally analogous terms, the two mechanisms through which a dealer may be exempted from a ban on business under current Rule G-37. First, under current Rule G-37(i), a registered securities association of which a dealer is a member, or another appropriate regulatory agency<sup>23</sup> (collectively, “agency”) may, upon application, exempt a dealer from a ban on municipal securities business. In determining whether to grant the exemption, the agency is required to consider multiple factors, in addition to any other relevant factors.

The amendments to Rule G-37(i) will provide a process for municipal advisors subject to a ban on municipal advisory business to request, on terms that are generally analogous to those for dealers, exemptive relief from such ban on business from a registered securities association of which is it a member or the Commission, or its designee, for all other municipal advisors. Dealer-municipal advisors seeking exemptive relief from a ban on municipal securities business and a ban on municipal advisory business will be required, for each type of ban, to seek relief from the applicable agency or agencies.

Under the amendments, in determining whether to grant the requested exemptive relief from a ban on municipal advisory business, the relevant agency will be required to consider the factors, with limited modifications, that currently apply when a request for exemptive relief is made by a dealer. The modifications to the factors are limited to those necessary to reflect their application to both dealers and municipal advisors.

As previously discussed, under amended Rule G-37(b), a contribution made by an MAP of a municipal advisor third-party solicitor soliciting business for a regulated entity client will subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business. Under the amendments to section (i), if either the municipal advisor third-party solicitor or the regulated entity client desires exemptive relief from the applicable ban on business, the entity that desires relief will be required to separately apply for the exemptive relief and independently satisfy the relevant agency that the application should be granted.

Second, under Rule G-37(j)(i), a dealer may avail itself of an automatic exemption (*i.e.*, without the need to apply to an agency) from a ban triggered

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<sup>23</sup> Under MSRB Rule D-14, “[w]ith respect to a broker, dealer, or municipal securities dealer, ‘appropriate regulatory agency’ has the meaning set forth in Section 3(a)(34) of the Act.”

by its MFP if the dealer: discovers the contribution within four months of the date of contribution; the contribution does not exceed \$250; and the MFP obtains a return of the contribution within sixty days of the dealer's discovery of the contribution. A dealer is limited to no more than two automatic exemptions per twelve-month period. Further, no dealer may execute more than one automatic exemption relating to contributions made by the same person (*i.e.*, an individual MFP) regardless of the time period. Amended Rule G-37(j) will extend its provisions to all municipal advisors and dealer-municipal advisors. Under amended Rule G-37(j), a municipal advisor will be able to avail itself of an automatic exemption from a ban triggered by an MAP of the municipal advisor upon satisfaction of conditions that will be the same or analogous to those applicable to dealers. Similarly, a dealer-municipal advisor subject to a cross-ban will be able to avail itself of an automatic exemption from a ban on applicable business upon satisfaction of the applicable conditions.<sup>24</sup> In addition, when a contribution made by an MAP of a municipal advisor third-party solicitor soliciting business for a regulated entity client will subject both the municipal advisor third-party solicitor and the regulated entity client to a ban on applicable business, each will be allowed to avail itself of an automatic exemption if it separately meets the specified conditions. The use of an automatic exemption will count against a regulated entity's allotment (of no more than two automatic exemptions) per twelve-month period, regardless of whether the contribution that triggered the ban was made by an MFP or an MAP of that regulated entity or by an MAP of an engaged municipal advisor third-party solicitor.

## Summary of Amendments to Rules G-8 and G-9 and Forms G-37 and G-37x

Rule G-8, on books and records, and Rule G-9, on preservation of records, specify the books and records that must be made and kept current by dealers and municipal advisors. Rules G-8 and G-9 will be amended to correspond to the amendments to Rule G-37. A new paragraph (h)(iii) will be added to Rule G-8 to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons as apply for dealers and their associated persons. Minor conforming amendments to Rule G-8(a)(xvi), which apply to dealers, will be incorporated to conform the recordkeeping requirements to the amendments to Rule G-37 and the

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<sup>24</sup> A cross-ban is viewed as one ban on business. The execution by a dealer-municipal advisor of the automatic exemptive relief provision to address a cross-ban will be considered the execution of one exemption.

related forms. For example, the obligation to submit Forms G-37 and G-37x to the MSRB in electronic form will be incorporated.

The amendments to Rule G-9(h) generally will require municipal advisors to preserve for six years the records required to be made in amended Rule G-8(h)(iii), consistent with the analogous retention requirement in Rule G-9(a) for dealers.

The amendments to Forms G-37 and G-37x will permit the forms to be used by both dealers and municipal advisors to make the disclosures that are required by amended Rule G-37(e). Dealer-municipal advisors will be able to make all required disclosures on a single Form G-37.

February 17, 2016

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## Text of Amendments\*

### **Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business**

(a) *Purpose.* The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities ~~industry market~~ are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors, municipal entities, obligated persons and the public interest by:

(i) prohibiting brokers, dealers and municipal securities dealers (collectively, “dealers”) from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with issuers municipal entities if certain political contributions have been made to officials of such ~~issuers~~ municipal entities; and

(ii) requiring ~~brokers, dealers and municipal securities dealers~~ dealers and municipal advisors to disclose certain political contributions, as well as other information, to allow public scrutiny of such political contributions, ~~and the municipal securities business of a broker, dealer or municipal securities dealer~~ dealers and the municipal advisory business of municipal advisors.

(b) *Ban on Municipal Securities Business or Municipal Advisory Business; Excluded Contributions.*

(i) *Two-Year Ban.*

(A) *Brokers, Dealers and Municipal Securities Dealers.* No ~~broker, dealer or municipal securities dealer~~ dealer shall engage in municipal securities business with an ~~issuer~~ municipal

\* Underlining indicates new language; strikethrough denotes deletions.

entity within two years after ~~any~~ a contribution to an official of such ~~issuer~~ municipal entity with dealer selection influence, as defined in paragraph (g)(xvi)(A) of this rule, made by: ~~(A) the broker, dealer or municipal securities dealer~~ dealer; ~~(B) any a municipal finance professional associated with such broker, dealer or municipal securities dealer~~ of the dealer; or ~~(C) any a political action committee controlled by either the broker, dealer or municipal securities dealer~~ the dealer or by ~~any a municipal finance professional~~ of the dealer;

(B) *Municipal Advisors.* No municipal advisor (excluding a municipal advisor third-party solicitor) shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with municipal advisor selection influence, as defined in paragraph (g)(xvi)(B) of this rule, made by the municipal advisor; a municipal advisor professional of the municipal advisor; or a political action committee controlled by either the municipal advisor or a municipal advisor professional of the municipal advisor.

(C) *Municipal Advisor Third-Party Solicitors.*

(1) *Municipal Advisor Third-Party Solicitors.* No municipal advisor third-party solicitor shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B) or (C) of this rule, as applicable, made by the municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor.

(2) *Regulated Entity Clients of a Municipal Advisor Third-Party Solicitor.* If a contribution is made by a municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor, the following shall apply.

(a) In the case of an engagement of the municipal advisor third-party solicitor by a dealer to solicit a municipal entity on behalf of the dealer, if the contribution is made to an official of a municipal entity with dealer selection influence, the prohibition on municipal securities business in paragraph (b)(i)(A) of this rule shall apply to the retaining dealer for two years following the contribution.

(b) In the case of an engagement of the municipal advisor third-party solicitor by a municipal advisor to solicit a municipal entity on behalf of the municipal advisor, if the contribution is made to an official of a municipal entity with municipal advisor selection influence, the prohibition on municipal advisory business in paragraph (b)(i)(B) of this rule shall apply to the retaining municipal advisor for two years following the contribution.

(D) *Cross-Bans for Dealer-Municipal Advisors.* In the case of a regulated entity that is both a dealer and a municipal advisor (a “dealer-municipal advisor”), the prohibition on municipal securities business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with dealer selection influence by a municipal advisor professional of the dealer-municipal advisor or a political action committee controlled by a municipal advisor professional of the dealer-municipal advisor; and the prohibition on municipal advisory business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with municipal advisor selection influence by a municipal finance professional of the dealer-municipal advisor or a political action committee controlled by a municipal finance professional of the dealer-municipal advisor.

(E) *Orderly Transition Period.* A dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a municipal entity and during the period of the engagement becomes subject to a prohibition under subsection (b)(i) of this rule may, notwithstanding such prohibition, continue to engage in the municipal securities business or municipal advisory business (except soliciting), as applicable, to allow for an orderly transition to another entity to engage in such business and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to the municipal entity; provided, however, that such transition period must be as short a period of time as possible and that the prohibition under subsection (b)(i) of this rule shall be extended by the duration of the orderly transition period.

(ii) *Excluded Contributions.* A contribution to an official of a municipal entity will not subject a dealer or municipal advisor to a ban on business under subsection (b)(i) of this rule if the contribution meets the specific conditions of an exclusion set forth below.

(A) *Voting Right/De Minimis Contribution.* The contribution is made by a municipal finance professional or municipal advisor professional who is entitled to vote for the official of the municipal entity and the contribution and any other contribution made to the official of the municipal entity by such person in total do not exceed \$250 per election.

~~provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of \$250 by any municipal finance professional to each official of such issuer, per election.~~

(B) *Contributions Made Before Becoming a Dealer Solicitor or Municipal Advisor Solicitor.* The contribution is made by a natural person who: (1) at the time of the contribution was not a municipal finance professional or municipal advisor professional; (2) became and is a municipal finance professional, or municipal advisor professional, or both, solely on the basis of being a dealer solicitor and/or municipal advisor solicitor; and (3) since becoming a municipal finance professional and/or municipal advisor professional has not solicited the municipal entity;

provided, however, that this non-solicitation condition is not required for this exclusion after two years have elapsed since the making of the contribution.

~~(ii) — For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.~~

(C) Contributions Made by Certain Persons More Than Six Months Before Becoming a Municipal Finance Professional or Municipal Advisor Professional. The contribution is made by a person who is either or both of the following: (1) a municipal finance professional solely based on activities as a municipal finance principal, dealer supervisory chain person, or dealer executive officer, and the contribution was made more than six months before becoming a municipal finance professional or; (2) a municipal advisor professional solely based on activities as a municipal advisor principal, municipal advisor supervisory chain person, or municipal advisor executive officer, and the contribution was made more than six months before becoming a municipal advisor professional.

~~(iii) — For an individual designated as a municipal finance professional solely pursuant to subparagraph (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the period beginning six months prior to the individual becoming a municipal finance professional.~~

(c) Prohibition on Soliciting and Coordinating Contributions and Payments.

(i) Contributions. No broker, dealer or municipal securities dealer dealer or any municipal finance professional of the broker, dealer or municipal securities dealer dealer shall solicit any person, (including but not limited to any affiliated entity of the broker, dealer or municipal securities dealer, dealer) or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer a municipal entity with dealer selection influence with which municipal entity the broker, dealer or municipal securities dealer dealer is engaging, or is seeking to engage in municipal securities business. No municipal advisor or municipal advisor professional of the municipal advisor shall solicit any person (including but not limited to any affiliated entity of the municipal advisor) or political action committee to make any contribution, or coordinate any contributions, to an official of a municipal entity with municipal advisor selection influence with which municipal entity the municipal advisor is engaging, or is seeking to engage in municipal advisory business. In the case of a municipal advisor third-party solicitor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B), or (C) of this rule, as applicable, by the municipal advisor third-party solicitor, or any municipal advisor professional of the municipal advisor third-party solicitor. In the case of a dealer-municipal advisor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with

dealer selection influence or an official of a municipal entity with municipal advisor selection influence by the dealer-municipal advisor, any municipal finance professional of the dealer-municipal advisor and any municipal advisor professional of the dealer-municipal advisor.

(ii) Payments. ~~No broker, dealer or municipal securities dealer~~ dealer, municipal advisor, municipal finance representative, municipal advisor representative, dealer solicitor, municipal advisor solicitor, municipal finance principal or municipal advisor principal or any individual designated as a ~~municipal finance professional of the broker, dealer or municipal securities dealer pursuant to subparagraphs (A), (B), or (C) of paragraph (g)(iv) of this rule~~ shall solicit any person, (including but not limited to any affiliated entity of the ~~broker, dealer or municipal securities dealer,~~ dealer or municipal advisor) or political action committee to make any payment, or shall coordinate any payments, to a political party of a state or locality where the ~~broker, dealer or municipal securities dealer~~ dealer or municipal advisor is engaging, or is seeking to engage in municipal securities business or municipal advisory business, as applicable.

(d) Prohibition on Circumvention of Rule. ~~No broker, dealer or municipal securities dealer~~ dealer, municipal advisor, or any municipal finance professional or municipal advisor professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e) Required Disclosure to Board.

(i) ~~Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall,~~ Each regulated entity must submit to the Board 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 Form G-37 setting forth containing, in the prescribed format, the following information:

(A) for any contributions to an officials of issuers a municipal entity (other than a contribution made by a municipal finance professional ~~or a, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity~~ to an official of ~~an issuer a municipal entity~~ for whom such person is entitled to vote if all contributions by such person to such official of ~~an issuer a municipal entity,~~ 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, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity~~ to a political party of a state or a 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) made by the persons and entities described in subclause (2) of this clause (A) subparagraph (e)(i)(A)(2) below:

(1) listing by state, the name and title (including any city/county/state or political subdivision) of each official of ~~an issuer a municipal entity~~ and political party ~~receiving contributions or payments~~ that received a contribution or payment during such calendar quarter, ~~listed by state;~~

(2) the contribution or payment amount made and the contributor category for each of the following persons and entities making such contributions or payments during such calendar quarter, as specified below:

(a) If a regulated entity, the identity of the contributor as a ~~the broker, dealer or municipal securities dealer~~ dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a ~~each~~ municipal finance professional; ~~(c) — each, municipal advisor professional, non-MFP executive officer; and~~ or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

~~(d)~~(c) If a political action committee, the identity as a ~~each~~ political action committee controlled by the ~~broker, dealer or municipal securities dealer~~ regulated entity or by any municipal finance professional or municipal advisor professional of the regulated entity;

(B) for any contributions to a bond ballot campaigns (other than a contribution made by a municipal finance professional, municipal advisor professional, or a non-MFP executive officer or non-MAP executive officer of the regulated entity to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed \$250 per ballot initiative) made by the persons and entities described in subclause (2) of this clause (B) subparagraph (e)(i)(B)(2) below:

(1) listing by state, the official name of each bond ballot campaign receiving a contributions during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, listed by state;

(2) the contribution amount ~~made~~ (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign), the specific date on which the contribution was made, and the contributor category for ~~of~~ each of the following persons and entities making such contributions during such calendar quarter as specified below:

(a) If a regulated entity, the identity of the contributor as a ~~the broker, dealer or municipal securities dealer~~ dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a ~~each~~ municipal finance professional; ~~(c) — each, municipal advisor professional, non-MFP executive officer; and~~ or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

~~(d)(c)~~ If a political action committee, the identity as a each political action committee controlled by the broker, dealer or municipal securities dealer or by regulated entity or any municipal finance professional or municipal advisor professional of the regulated entity;

(3) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to ~~this clause (B)~~ paragraph (e)(i)(B) of this rule has been made, or to which a contribution has been made by a municipal finance professional, municipal advisor professional, ~~or a non-MFP executive officer or non-MAP executive officer~~ during the period beginning two years prior to such ~~individual becoming a municipal finance professional or a non-MFP executive officer~~ person acquiring such status that would have been required to be disclosed if such ~~individual~~ person had ~~been a municipal finance professional or a non-MFP executive officer~~ acquired such status at the time of such contribution and the reportable date of selection on which the ~~broker, dealer or municipal securities dealer~~ regulated entity was selected to engage in ~~such the municipal securities business or municipal advisory business~~, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) ~~the any~~ payments or reimbursements, related to any contribution to any bond ballot contribution, campaign received by ~~each broker, dealer or municipal securities dealer~~ the regulated entity or any of its municipal finance professionals or municipal advisor professionals from any third party that are required to be disclosed pursuant to ~~this clause (B)~~ paragraph (e)(i)(B) of this rule, including the amount paid and the name of the third party making such payment or reimbursement.

(C) ~~a list of issuers~~ listing by state, the municipal entities with which the broker, dealer or municipal securities dealer regulated entity has engaged in municipal securities business or municipal advisory business during such calendar quarter, ~~listed by state~~, along with the type of municipal securities business or municipal advisory business, and, in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the listing of the type of municipal advisory business shall be accompanied by the name of the third party on behalf of which business was solicited and the nature of the business solicited (municipal securities business, municipal advisory business and/or investment advisory services—disclose all applicable categories);

(D) any information required to be included on Form G-37 for such calendar quarter pursuant to ~~paragraph~~ subsection (e)(iii) of this rule;

(E) such other identifying information required by Form G-37; and

(F) whether any contribution listed in this ~~paragraph~~ subsection (e)(i) of this rule is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

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

(ii) No ~~broker, dealer or municipal securities dealer~~ regulated entity shall be required to ~~send~~ submit Form G-37 to the Board for any calendar quarter in which either:

(A) such ~~broker, dealer or municipal securities dealer~~ regulated entity has no information that is required to be reported pursuant to ~~clauses~~ paragraphs (e)(i)(A) through (D) of paragraph (e)(i) this rule for such calendar quarter; or

(B) such ~~broker, dealer or municipal securities dealer~~ regulated entity has not engaged in municipal securities business or municipal advisory business, but only if such ~~broker, dealer or municipal securities dealer~~ regulated entity:

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

(2) has ~~sent~~ submitted to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such ~~broker, dealer or municipal securities dealer~~ regulated entity did not engage in municipal securities business or municipal advisory business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such ~~broker, dealer or municipal securities dealer~~ regulated entity in connection with Forms G-37 and G-37x under ~~this paragraph subsection (e)(ii) of this rule~~ and ~~rule~~ Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, and (c) such other identifying information required by Form G-37x; provided, however, that, if a ~~broker, dealer or municipal securities dealer~~ regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the submission of Form G-37x to the Board, such ~~broker, dealer or municipal securities dealer~~ regulated entity shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any ~~broker, dealer or municipal securities dealer~~ regulated entity.

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

(iv) A ~~broker, dealer or municipal securities dealer~~ regulated entity that submits Form G-37 or Form G-37x to the Board shall ~~either~~:

~~(A) send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or~~

~~(B) submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37, and G-37x and G-38t*.~~

(f) *Voluntary Disclosure to Board.* The Board will accept additional information related to contributions made to officials of ~~issuers~~ municipal entities and bond ballot campaigns and payments made to political parties of states and political subdivisions voluntarily submitted by ~~brokers, dealers or municipal securities dealers~~ regulated entities or others, provided that such information is submitted otherwise in accordance with section (e) of this rule.

(g) *Definitions.*

(i) "Regulated entity" means a dealer or municipal advisor and "regulated entity," "dealer" and "municipal advisor" exclude the entity's associated persons.

~~(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.~~

~~(iv)(ii)~~ The term "municipal "Municipal finance professional" means:

(A) any "municipal finance representative" - any associated person primarily engaged in municipal securities representative activities, as defined in rule Rule G-3(a)(i), provided, however, that other than sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

(B) any "dealer solicitor" - any associated person (including but not limited to any affiliated person of the broker, dealer or municipal securities dealer, as defined in rule G-38) who solicits municipal securities business who is a municipal solicitor as defined in paragraph (g)(xiii)(A) of this rule;

(C) any "municipal finance principal" - any associated person who is both (i) a municipal securities principal or a municipal securities sales principal; and (ii) a supervisor of any persons described in subparagraphs (A) or (B) municipal finance representative (as defined in paragraph (g)(ii)(A) of this rule) or dealer solicitor (as defined in paragraph (g)(ii)(B) of this rule);

(D) any "dealer supervisory chain person" - any associated person who is a supervisor of any person described in subparagraph (C) municipal finance principal up through and including, in the case of a broker, dealer or municipal securities dealer 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 by rule Rule G-1(a)(1)(A); or

(E) any “dealer executive officer” - 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) an executive or management committee (or similarly situated official) -s, if any, of a dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1(a)); provided, however, that, if the persons described in this paragraph are the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), of the broker, dealer or municipal securities dealer dealer meeting the definition of municipal finance professional, the dealer shall be deemed to have no municipal finance professionals.

Each person designated by the ~~broker, dealer or municipal securities dealer~~ dealer as a municipal finance professional pursuant to ~~rule Rule~~ Rule G-8(a)(xvi) is deemed to be a municipal finance professional, and ~~Each person designated a municipal finance professional~~ shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iii) “Municipal advisor professional” means:

(A) any “municipal advisor representative” – any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);

(B) any “municipal advisor solicitor” – any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);

(C) any “municipal advisor principal” – any associated person who is both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i)); and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);

(D) any “municipal advisor supervisory chain person” – any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, 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 advisory activities, as required by 17 CFR 240.15Ba1-1(d)(4)(i); or

(E) any “municipal advisor executive officer” – any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

Each person designated by the municipal advisor as a municipal advisor professional pursuant to Rule G-8(h)(iii) is deemed to be a municipal advisor professional and shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iv) “Bank municipal advisor” means a municipal advisor that is a bank or a separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder.

~~(v) The term “bond~~ “Bond ballot campaign” means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.

~~(vi) The term “contribution~~ “Contribution” means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) to an official of ~~an issuer~~ a municipal entity:

- (1) for the purpose of influencing any election for federal, state or local office;
- (2) for payment of debt incurred in connection with any such election; or
- (3) for transition or inaugural expenses incurred by the successful candidate for state or local office; or

(B) to a bond ballot campaign:

- (1) for the purpose of influencing (whether in support of or opposition to) any ballot initiative seeking authorization for the issuance of municipal securities through public approval obtained by popular vote;
- (2) for payment of debt incurred in connection with any such ballot initiative; or
- (3) for payment of the costs of conducting any such ballot initiative.

~~(vii) The term “issuer~~ “Issuer” means the governmental issuer specified in section Section 3(a)(29) of the Act.

(viii) “Municipal advisor” means a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder.

(ix) “Municipal advisory business” means those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder, including: (A) the provision of advice to or on behalf of a municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such

financial products or issues and (B) the solicitation of a municipal entity or obligated person, within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder.

(x) “Municipal advisor third-party solicitor” means a municipal advisor that is currently soliciting a municipal entity, is engaged to solicit a municipal entity, or is seeking to be engaged to solicit a municipal entity for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

(xi) “Municipal entity” has the meaning specified in Section 15B(e)(8) of the Act and the rules and regulations thereunder.

~~(vii)~~(xii) The term “municipal “Municipal securities business”” means:

(A) the purchase of a primary offering (as defined in ~~rule~~ Rule A-13(f)) of municipal securities from ~~the issuer~~ a municipal entity on other than a competitive bid basis (e.g., negotiated underwriting); ~~or~~

(B) the offer or sale of a primary offering of municipal securities on behalf of any ~~issuer~~ municipal entity (e.g., private placement); ~~or~~

(C) the provision of financial advisory or consultant services to or on behalf of ~~an issuer~~ a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; ~~or~~ and

(D) the provision of remarketing agent services to or on behalf of ~~an issuer~~ a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(xiii) “Municipal solicitor” means:

(A) an associated person of a dealer who solicits a municipal entity for municipal securities business on behalf of the dealer;

(B) an associated person of a municipal advisor who solicits a municipal entity for municipal advisory business on behalf of the municipal advisor; or

(C) an associated person of a municipal advisor third-party solicitor who solicits a municipal entity on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with such municipal advisor third-party solicitor.

(xiv) “Non-MAP executive officer” means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the

municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank, as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder), but does not include any municipal advisor professional, as defined in subsection (g)(iii) of this rule; provided, however, that if no associated person of the municipal advisor meets the definition of municipal advisor professional, the municipal advisor shall be deemed to have no non-MAP executive officers. Each person listed by the municipal advisor as a non-MAP executive officer pursuant to Rule G-8(h)(iii) is deemed to be a non-MAP executive officer.

~~(v)(xv)~~ The term “Non-MFP executive officer” means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the ~~broker, dealer or municipal securities dealer~~ dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in ~~rule~~ Rule G-1(a)), but does not include any municipal finance professional, as defined in ~~paragraph (iv) of this section~~ subsection (g)(ii) of this rule; provided, however, that if no associated person of the ~~broker, dealer or municipal securities dealer~~ dealer meets the definition of municipal finance professional, the ~~broker, dealer or municipal securities dealer~~ dealer shall be deemed to have no non-MFP executive officers. Each person listed by the ~~broker, dealer or municipal securities dealer~~ dealer as a non-MFP executive officer pursuant to ~~rule~~ Rule G-8(a)(xvi) is deemed to be a non-MFP executive officer.

~~(vi)(xvi)~~ The term “official of such issuer” or “official of an issuer” “Official of such municipal entity” or “official of a municipal entity,” without further specification, means any person who meets the definition of at least one of paragraphs (g)(xvi)(A), (g)(xvi)(B), or (g)(xvi)(C) of this rule.

(A) “Official of a municipal entity with dealer selection influence” or “official of such municipal entity with dealer selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: ~~(A)(1)~~ (1) for elective office of the issuer municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a ~~broker, dealer or municipal securities dealer~~ dealer for municipal securities business ~~by the issuer;~~ or ~~(B)(2)~~ (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a ~~broker, dealer or municipal securities dealer~~ dealer for municipal securities business ~~by an issuer.~~

(B) “Official of a municipal entity with municipal advisor selection influence” or “official of such municipal entity with municipal advisor selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a municipal advisor for municipal advisory business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a municipal advisor for municipal advisory business.

(C) “Official of a municipal entity with investment adviser selection influence” or “official of such municipal entity with investment adviser selection influence” means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of an investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for investment advisory services; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of an investment adviser for investment advisory services.

~~(viii)(xvii)~~ The term ~~“payment~~ “Payment” means any gift, subscription, loan, advance, or deposit of money or anything of value.

~~(xi)(xviii)~~ The term ~~“reportable~~ “Reportable date of selection” means the date of the earliest to occur of: ~~(i)(A)~~ (A) the execution of an engagement letter; ~~(ii)(B)~~ (B) the execution of a bond purchase agreement; ~~or (iii)~~ (C) the receipt of formal notification (provided either in writing or orally) from or on behalf of the ~~issuer~~ municipal entity that the dealer or municipal advisor has been selected to engage in municipal securities business or municipal advisory business; or, (C) solely in the case of a dealer, the execution of a bond purchase agreement.

(xix) “Solicit,” or “soliciting,” except as used in section (c) of this rule, means to make, or making, respectively, a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement by the municipal entity of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for municipal securities business, municipal advisory business or investment advisory services; provided, however, that it does not include advertising by a dealer, municipal advisor or investment adviser.

~~(ix) — Except as used in section (c), the term “solicit” means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i).~~

(h) *Operative Date/Transitional Effect.* The ~~prohibition~~ prohibitions on engaging in municipal securities business and municipal advisory business, as described in section (b) of this rule, ~~arises~~ arise only from contributions made on or after ~~April 25, 1994~~ August 17, 2016; provided, however, that any prohibition under this rule already in effect on August 16, 2016, shall be of the scope and continue for the length of time provided under Rule G-37 as in effect at the time of the contribution that resulted in such prohibition.

(i) *Application for Exemption.* Upon application, a ~~A~~ registered securities association with respect to a ~~broker, dealer or municipal securities dealer~~ dealer who that is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other ~~broker, dealer or municipal securities dealer~~ dealer, upon application, may, exempt, conditionally or unconditionally, exempt such dealer from a prohibition on municipal securities business in subsection (b)(i) of this rule ~~a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition.~~ Upon

application, a registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission's designee, with respect to any other municipal advisor, may, conditionally or unconditionally, exempt such municipal advisor from a prohibition on municipal advisory business in subsection (b)(i) of this rule. In determining whether to grant such exemption, ~~the registered securities association or appropriate regulatory agency shall consider,~~ among other factors, the following shall be considered:

(i) whether such exemption is consistent with the public interest, the protection of investors, municipal entities and obligated persons and the purposes of this rule;

(ii) whether such ~~broker, dealer or municipal securities dealer~~ regulated entity (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the ~~broker, dealer or municipal securities dealer~~ regulated entity;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or a municipal advisor professional or otherwise an employee of the ~~broker, dealer or municipal securities dealer~~ regulated entity, or was seeking such employment, or was a municipal advisor professional or otherwise an employee of a municipal advisor third-party solicitor engaged by the regulated entity or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g. federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) *Automatic Exemptions.*

(i) A ~~broker, dealer or municipal securities dealer~~ regulated entity that is prohibited from engaging in municipal securities business or municipal advisory business with an issuer a municipal entity pursuant to subsection (b)(i) of this rule as a result of a contribution made by a municipal finance professional or a municipal advisor professional, or a municipal advisor professional of a municipal advisor third-party solicitor on behalf of such regulated entity may exempt itself from such prohibition, subject to ~~subparagraphs~~ subsection (j)(ii) and subsection (j)(iii) of this section rule, upon satisfaction of the following requirements: ~~(1)(A)~~ (1)(A) the ~~broker, dealer or municipal securities dealer~~ regulated entity must have discovered the contribution which resulted in the prohibition ~~on business~~ within four months of the date of such contribution; ~~(2)(B)~~ (2)(B) such contribution must not have exceeded \$250; and ~~(3)(C)~~ (3)(C) the contributor

must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the ~~broker, dealer or municipal securities dealer~~ regulated entity.

(ii) A ~~broker, dealer or municipal securities dealer~~ regulated entity is entitled to no more than two automatic exemptions per 12-month period.

(iii) A ~~broker, dealer or municipal securities dealer~~ regulated entity may not execute more than one automatic exemption relating to contributions by the same ~~municipal finance professional~~ person regardless of the time period.

\* \* \* \* \*

### **Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers, and Municipal Advisors**

(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) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37.* Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal finance professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MFP executive officers;

(C) the states in which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business;

(D) a listing of ~~issuers~~ municipal entities with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along with the type of municipal securities business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of ~~an issuer~~ a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year and

separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of ~~an issuer~~ a municipal entity made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of ~~an issuer~~ a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of \$250 to any official of ~~an issuer~~ a municipal entity, per election. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal finance representative and each dealer solicitor as defined in those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of Rule G-37(g)(ii)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of Rule G-37(g)(ii)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers; ~~and~~

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, any political action committee controlled by a municipal finance professional, and non-MFP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of \$250 per political party, per year. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal finance representative and each dealer solicitor as

~~defined in those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule Rule G-37(g)(ii)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule Rule G-37(g)(ii)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers;~~

(H) the contributions, direct or indirect, to bond ballot campaigns made by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the broker, dealer or municipal securities dealer or political action committee controlled by the broker, dealer or municipal securities dealer has made a contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in ~~such the~~ municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the broker, dealer or municipal securities dealer from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment-; and

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal finance professional, political action committee controlled by the municipal finance professional or non-MFP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal finance professional or a non-MFP executive officer during the period beginning two years prior to such individual becoming a municipal

finance professional or a non-MFP executive officer that would have been required to be disclosed if such individual had been a municipal finance professional or a non-MFP executive officer at the time of such contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in ~~such the~~ municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal finance professional or non-MFP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of \$250 to any bond ballot campaign, per ballot initiative.

(J) Brokers, dealers and municipal securities dealers shall maintain copies of the Forms G-37 and G-37x ~~sent~~ submitted to the Board along with ~~the certified or registered mail receipt or other~~ a record of sending submitting such forms to the Board.

(K) Terms used in this paragraph (xvi) have the same meaning as in ~~rule~~ Rule G-37.

(L) No change.

(M) 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 (B) of paragraph (e)(ii) of ~~rule~~ 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 ~~(M)(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) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) No change.

(ii) Reserved.

(iii) ~~Reserved.~~ Records Concerning Political Contributions and Prohibitions on Municipal Advisory Business Pursuant to Rule G-37. Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal advisor professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MAP executive officers;

(C) the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business;

(D) a listing of municipal entities with which the municipal advisor has engaged in municipal advisory business, along with the type of municipal advisory business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the municipal advisor and each political action committee controlled by the municipal advisor for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of a municipal entity made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the municipal advisor discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to officials of a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of \$250 to any official of a municipal entity, per election. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by

such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal advisor professionals, any political action committee controlled by a municipal advisor professional, and non-MAP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal advisor professional or non-MAP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of \$250 per political party, per year. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(H) the contributions, direct or indirect, to bond ballot campaigns made by the municipal advisor and each political action committee controlled by the municipal advisor for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor or political action committee controlled by the municipal advisor has made a contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment; and

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor professional, political action committee controlled by the municipal advisor professional or non-MAP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal advisor professional or a non-MAP executive officer during the period beginning two years prior to such individual becoming a municipal advisor professional or a non-MAP executive officer that would have been required to be disclosed if such individual had been a municipal advisor professional or a non-MAP executive officer at the time of such contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor professional or non-MAP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of \$250 to any bond ballot campaign, per ballot initiative.

(J) Municipal advisors shall maintain copies of the Forms G-37 and G-37x submitted to the Board along with a record of submitting such forms to the Board.

(K) Terms used in this paragraph (iii) have the same meaning as in Rule G-37.

(L) No record is required by this paragraph (h)(iii) of:

(i) any municipal advisory business done or contribution to officials of municipal entities or political parties of states or political subdivisions; or

(ii) any payment to political parties of states or political subdivisions

if such municipal advisory business, contribution, or payment was made prior to August 17, 2016.

(M) No municipal advisor shall be subject to the requirements of this paragraph (h)(iii) during any period that such municipal advisor has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of Rule G-37; provided, however, that such municipal advisor shall remain obligated to comply with clause (H) of this paragraph (h)(iii) during such period of exemption. At such time as a municipal advisor that has been exempted by this clause (M) from the requirements of this paragraph (h)(iii) engages in any municipal advisory business, all requirements of this paragraph (h)(iii) 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 municipal advisor.

(iv) Reserved.

(v) No change.

\* \* \* \* \*

#### **Rule G-9: Preservation of Records**

(a) - (g) No change.

(h) *Municipal Advisor Records.*

(i) Subject to subsections (ii) and (iii) of this section, every ~~Every~~ municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) ~~provided that the~~ The records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(iii) The records described in Rule G-8(h)(iii) shall be preserved for at least six years; 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.

(i) - (k) No change.

\* \* \* \* \*

FORM G-37

MSRB

Name of ~~dealer~~ Regulated Entity: \_\_\_\_\_Report ~~period~~ Period: \_\_\_\_\_**I. CONTRIBUTIONS made to ~~issuer~~ officials of a municipal entity (list by state)**

State	Complete name, title (including any city/county/state or other political subdivision) of <del>issuer</del> <u>municipal entity</u> official	Contributions by each contributor category ( <i>i.e.</i> , <u>for purposes of this form</u> , <del>dealer, dealer controlled PAC, municipal finance professional, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers, municipal advisor, municipal advisor controlled PAC, municipal advisor professional, municipal advisor professional controlled PAC, and non-MAP executive officer</del> ). For each contribution, list contribution amount and contributor category (disclose all applicable categories for each contributor). (For example, \$500 contribution by non-MFP executive officer)
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If any contribution is the subject of an automatic exemption pursuant to Rule G-37(j), list amount of contribution and date of such automatic exemption.

**II. PAYMENTS made to political parties of states or political subdivisions (list by state)**

State	Complete name (including any city/county/state or other political subdivision) of political party	Payments by each contributor category ( <del>i.e., dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers</del> ). For each payment, list payment amount and contributor category (For example, \$500 payment by non-MFP executive officer)
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### III. CONTRIBUTIONS made to bond ballot campaigns (list by state)

#### A. Contributions

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued and the name of the entity issuing the municipal securities	Contributions, including the specific date the contributions were made, by each contributor category <del>i.e., dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers</del> . For each contribution, list contribution amount and contributor category (For example, \$500 contribution by non-MFP executive officer)
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#### B. Reimbursement for Contributions

List below any payments or reimbursements, related to any disclosed bond ballot contribution, received by each ~~broker, dealer or municipal securities dealer~~ dealer, municipal finance professional, ~~or non-MFP executive officer~~, municipal advisor, municipal advisor professional, or non-MAP executive officer from any third party, including the amount paid and the name of the third party making such payments or reimbursements.

### IV. MUNICIPAL ENTITIES with which ~~dealer~~ the regulated entity has engaged in municipal securities business or municipal advisory business (list by state)

#### A. Municipal Securities Business

State Complete name of municipal entity and city/county

Type of municipal securities business (negotiated underwriting, ~~agency offering~~ private placement, financial advisor, or remarketing agent)

### **B. Municipal Advisory Business**

State Complete name of municipal entity and city/county

Type of municipal advisory business (advice or solicitation) (and in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the name of the third party on behalf of which business was solicited and the nature of the business solicited (municipal securities business, municipal advisory business or investment advisory services))

### **B.C. Ballot-Approved Offerings**

Full ~~issuer~~ name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which each contributor category (~~i.e., dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers~~) has made a contribution and the reportable date of selection on which the ~~broker, dealer or municipal securities dealer~~ regulated entity was selected to engage in ~~such~~ the municipal securities business or municipal advisory business.

Full ~~Issuer~~ Name  
of Municipal Entity      Full Issue Description      Reportable Date of Selection

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(must be officer of ~~dealer~~ regulated entity)

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

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

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

Submit to the Municipal Securities Rulemaking Board ~~two~~ a completed forms quarterly by due date (specified by the MSRB) ~~to:~~

~~Municipal Securities Rulemaking Board~~

~~1300 I Street NW  
Suite 1000  
Washington, DC 20005-3314~~

## FORM G-37x

## MSRB

Name of ~~dealer~~ Regulated Entity: \_\_\_\_\_

The undersigned, on behalf of the ~~dealer~~ regulated entity identified above, does hereby certify that such ~~dealer~~ regulated entity did not engage in "municipal securities business" or "municipal advisory business" (in each case, 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~~ regulated entity, does hereby acknowledge that, notwithstanding the submission of this Form G-37x to the MSRB, such ~~dealer~~ regulated entity will be required to:

- (1) submit Form G-37 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) undertake the recordkeeping obligations set forth in Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, at such time as it no longer qualifies for the relevant exemption(s) set forth in Rule G-8(a)(xvi)(M)(~~K~~) and/or Rule G-8(h)(iii)(M);
- (3) 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)(B); and
- (4) submit a new Form G-37x in order to again meet the requirements for the exemption set forth in Rule G-37(e)(ii)(B) in the event that the ~~dealer~~ regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the date of this Form G-37x and thereafter wishes to qualify for ~~said~~ the exemption.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (must be officer of ~~dealer~~ regulated entity)

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

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

**Submit to the Municipal Securities Rulemaking Board**

Submit to: ~~\_\_\_\_\_~~ **Municipal Securities Rulemaking Board**  
 1300 I Street NW  
 Suite 1000  
 Washington, DC 20005-3314