MSRB NOTICE 2011-46 (AUGUST 19, 2011)

MSRB FILES PAY TO PLAY RULE FOR MUNICIPAL ADVISORS AND CHANGES TO DEALER PAY TO PLAY RULE

On August 19, 2011, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to establish “pay to play” and related rules for municipal advisors and to make certain conforming changes to the existing pay to play rules for brokers, dealers, and municipal securities dealers (“dealers”). The proposed rule change[[1]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn1) consists of (i) proposed MSRB Rule G-42 (on political contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G-8 (on books and records), G-9 (on preservation of records), and G-37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G-37/G-42 and Form G-37x/G-42x; and (iv) a proposed restatement of a Rule G-37 interpretive notice issued by the MSRB in 1997 (“Rule G-37 Interpretive Notice”).[[2]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn2)

The MSRB has requested that, if approved by the Commission, the proposed rule change be made effective six months after the date on which the Commission first approves rules defining the term “municipal advisor” under the Exchange Act or such later date as the Commission approves the proposed rule change. The MSRB has also requested that no contribution made prior to the effective date of proposed Rule G-42 would result in a ban pursuant to proposed Rule G-42(b)(i);[[3]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn3) provided, that the proposed rule change would not affect any ban on municipal securities business under Rule G-37(b)(i) already in existence prior to the effective date of proposed Rule G-42.

**BACKGROUND**

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),[[4]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn4) the MSRB was expressly directed by Congress to protect municipal entities,[[5]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn5) as well as investors and the public interest. The proposed rule change would help to prevent municipal advisors from seeking to influence the award of business by government officials by making or soliciting political contributions to those officials. Such contributions distort and undermine the fairness of the process by which government business is awarded. The proposed rule change would help protect municipal entities and help to perfect the mechanism of a free and open market in municipal securities. Just as pay to play activities by some dealers had the potential to undermine the integrity of the municipal securities market and were addressed by the MSRB with Rule G-37 (on political contributions and prohibitions on municipal securities business) in 1994, pay to play activities by some municipal advisors could damage the public’s confidence in the municipal marketplace.

On January 14, 2011, the MSRB requested comment on a draft version of the proposed rule change.[[6]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn6) A description of the comments received on that draft and the MSRB’s responses are included in the MSRB’s filing of the proposed rule change.

**SUMMARY OF PROPOSED RULE CHANGE**

A more-detailed description of the provisions of the proposed rule change follows:

Proposed Rule G-42 concerns political contributions made by all municipal advisors, both those that are dealers and those that are not. Like Rule G-37, the proposed rule would not ban political contributions. Instead, proposed Rule G-42 would:

* prohibit a municipal advisor from engaging in “municipal advisory business” with a municipal entity for compensation for a period of time beginning on the date of a non-*de minimis*[[7]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn7) political contribution to an “official of the municipal entity” by the municipal advisor, any of its municipal advisor professionals (“MAPs”), or a political action committee controlled by the municipal advisor or a MAP, and ending two years after all municipal advisory business with the municipal entity has been terminated;[[8]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn8)
* prohibit a municipal advisor from soliciting third-party business[[9]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn9) from a municipal entity for compensation, or receiving compensation for the solicitation of third-party business from a municipal entity, for two years after a non-*de minimis* political contribution to an “official of the municipal entity;”[[10]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn10)
* prohibit municipal advisors and MAPs from soliciting contributions, or coordinating contributions, to officials of municipal entities with which the municipal advisor is engaging or seeking to engage in municipal advisory business or from which the municipal advisor is soliciting third-party business;[[11]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn11)
* prohibit municipal advisors and MAPs from soliciting payments, or coordinating payments, to political parties of states or localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business or from which the municipal advisor is soliciting third-party business;[[12]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn12)
* prohibit municipal advisors and MAPs from committing indirect violations of proposed Rule G-42;[[13]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftn13)
* require quarterly disclosures to the MSRB of certain contributions and related information[[14]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftn14) and
* permit certain exemptions from the ban on business for compensation, either by the SEC, upon application,[[15]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftn15) or automatically.[[16]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftn16)

**Look-Back Provision.** In general, contributions made within two years[[17]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn17) before an individual’s employment as a municipal advisor could trigger a ban on municipal advisory business for compensation, a ban on the solicitation of third-party business from a municipal entity for compensation, and a ban on receipt of compensation for the solicitation of third-party business from a municipal entity (the “look-back provision”); however, no contributions made before six months after the effective date of proposed Rule G-42 would trigger such a ban. However, no bans on municipal securities business already in effect under Rule G-37 would be affected by the proposed rule.

**Key Terms.** Two key terms used in proposed Rule G-42 are “municipal advisor professional” and “official of a municipal entity.” “Municipal advisor professional” would be defined[[18]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn18) to mean:

* any associated person engaged in municipal advisory business with a municipal entity;
* any associated person (including, but not limited to, any affiliated person of the municipal advisor[[19]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn19)) who solicits municipal advisory business from a municipal entity on its own behalf or solicits third-party business;
* any associated person who is a supervisor of the municipal advisory activities of any person who is a municipal advisor professional;
* any associated person who is, in turn, part of the supervisory chain up through and including the Chief Executive Officer or similarly situated official; or
* any associated person who is a member of the municipal advisor’s executive or management committee or similarly situated officials.

“Official of a municipal entity” would be defined[[20]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn20) to mean any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate:

* for elective office of the municipal entity, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a municipal advisor by the municipal entity or the hiring of a person on behalf of which the municipal advisor is soliciting third-party business; or
* for any elective office of a municipal entity, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a municipal advisor by a municipal entity or the hiring of a person on behalf of which the municipal advisor is soliciting third-party business.

**Ban on Business for Compensation.** Two types of persons are municipal advisors within the meaning of Section 15B(e)(4) of the Exchange Act. Some provide advice to or on behalf of municipal entities or obligated persons. Others solicit third-party business from municipal entities.

Proposed Rule G-42 would distinguish between the two types of municipal advisors in two ways. First, the definition of “municipal advisory business” would only cover the activities of the first type of municipal advisor. It would not cover the solicitation activities of the second type of municipal advisor, which are addressed separately.

Second, the duration of the ban on business for compensation would differ for the two types of advisors. The first type of municipal advisor is subject to a fiduciary duty to the municipal entity with which it is engaging in municipal advisory business. Accordingly, such a municipal advisor might not be able to cease its municipal advisory business for that municipal entity immediately upon making a non-*de minimis* political contribution. Instead, it might be necessary for such a municipal advisor to continue providing advisory services to the municipal entity for a reasonable transition period. Accordingly, the ban on municipal advisory business with that municipal entity for compensation for such a municipal advisor would not end until two years after it had terminated all of its municipal advisory business with the municipal entity. The other type of municipal advisor does not have a municipal entity as its client and, accordingly, has no fiduciary duty to the municipal entity. Such a municipal advisor, therefore, has no such need for a transition period before it ceases its solicitation activities. As a result, the ban on solicitation of third-party business from a municipal entity for compensation, and the receipt of compensation for the solicitation of third-party business from a municipal entity, applicable to such a municipal advisor would begin immediately upon the making of the non-*de minimis* political contribution that results in the ban and ends two years after such contribution is made.

**Compensation.** For purposes of proposed Rule G-42, the MSRB would consider compensation to include any economic benefit to the municipal advisor, whether in the form of an advisory fee or some other fee relating to the total services rendered, reimbursements for costs,[[21]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn21) commissions, or some combination of the foregoing. A municipal advisor would not be permitted to accept a new engagement to provide non-advisory services to the municipal entity in return for the provision of otherwise uncompensated municipal advisory services to the municipal entity. It also could not accept increased compensation for the provision of other services designed to replace the compensation that proposed Rule G-42 prohibits it from receiving. For example, a dealer that could not receive compensation for its financial advisory services as a result of a non-*de minimis* political contribution could not receive increased underwriting compensation attributable to its financial advisory services. Similarly, a municipal advisor that could not be compensated for soliciting investment advisory business from a public pension fund as a result of a non-*de minimis* contribution could not receive increased compensation for soliciting business from another potential investor to replace the prohibited compensation.

**Reasonable Transition Period.** Many municipal advisors have long-term contracts or engagements with municipal entities. Such municipal advisors might not be able to immediately resign from such contract or engagement, after a non-*de minimis* contribution had been made to an official of a municipal entity, without violating their fiduciary obligations to their municipal entity clients. However, the MSRB does not intend for a municipal advisor to engage in municipal advisory business with a municipal entity on an uncompensated basis indefinitely. Instead, a municipal advisor would only need to continue to engage in such business with a municipal entity on an uncompensated basis for a reasonable period of time. This would allow the municipal advisor to fulfill its fiduciary duty to the municipal entity and create an orderly transition period during which the municipal entity could obtain successor advisory services. This transition period should be as short a period of time as possible and is intended to give the municipal entity client the opportunity to receive the benefit of the work already provided by the municipal advisor and to find a replacement to complete the work, as needed. Accordingly, proposed Rule G-42 would provide that the ban on municipal advisory business for a municipal entity for compensation would not end until two years after all municipal advisory business with the municipal entity had been terminated.

**Disclosure Requirements.** Proposed Rule G-42 would establish disclosure requirements to facilitate enforcement of “pay to play” restrictions and function as a public disclosure mechanism to enhance the integrity of the municipal market. Proposed Rule G-42 would require municipal advisors to disclose publicly on Form G-37/G-42[[22]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn22) all non-*de minimis* contributions to officials of a municipal entity, payments to political parties of states and political subdivisions, and contributions to bond ballot campaigns made by municipal advisors, MAPs, their political action committees, and non-MAP executive officers, as well as information on the municipal advisory business with municipal entities and third-party business awarded as a result of solicitations of municipal entities.[[23]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn23) The Board believes that public access to this information would facilitate public scrutiny of political contributions in the context of the municipal advisory business and solicitations of municipal advisors to help assure citizens, investors, municipal entities, and other industry participants that municipal advisors, and those persons on whose behalf they solicit, are awarded business based on merit, not political contributions.

**Future Interpretive Guidance.** The MSRB has issued a great deal of interpretive guidance under Rule G-37, some of which is in the form of questions and answers. Much of that guidance is equally applicable to proposed Rule G-42, and the MSRB expects to adopt similar guidance under Rule G-42, subject to approval by the SEC. Such interpretive guidance would be subject to review and comment prior to its approval.

**PROPOSED AMENDMENTS TO EXISTING MSRB RULES**

**MSRB Rule G-37.** The proposed amendments to Rule G-37 would remove any references to “financial advisory and consulting services,” because those activities would be covered by proposed Rule G-42. The definitions of “solicit,” “affiliated company,” and “affiliated person of the broker, dealer, or municipal securities dealer” would be conformed to those in proposed Rule G-42. The reference in Rule G-37(b)(1)(B) to “any municipal finance professional associated with such broker, dealer or municipal securities dealer” has been changed to “any municipal finance professional of such broker, dealer, or municipal securities dealer,” because, by definition, all municipal finance professionals are associated persons of brokers, dealers, or municipal securities dealers. Clarifications to Rule G-37 would provide that, in order for certain contributions not to result in a ban on municipal securities business or required reporting to the MSRB, they must be made to officials of issuers for whom the municipal finance professionals may vote at the time of the contribution. References to Forms G-37 and G-37x would be changed to Forms G-37/G-42 and G-37x/G-42x, which would be the combined “macroforms” used by both dealers and municipal advisors to make reports to the MSRB under Rule G-37(e) and proposed Rule G-42(e), respectively. Such forms would be required to be submitted electronically.

**MSRB Rules G-8 and G-9.** Proposed Rule G-42 would necessitate amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rule G-8 would require municipal advisors to create and maintain records necessary for the enforcement of the proposed rule, including, but not limited to, political contributions and payments; lists of MAPs and non-MAP executive officers; the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business with municipal entities or soliciting third-party business; a list of municipal entities with which the municipal advisor has engaged in municipal advisory business and the type of municipal advisory business; a list of the third-party business awarded; and Forms G-37/G-42 and G-37x/G-42x. The proposed amendments to Rule G-9 generally would require municipal advisors to preserve records required to be made pursuant to the proposed amendments to Rule G-8 for six years. The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to recordkeeping and record retention requirements related to proposed Rule G-42 that are substantially similar to those to which dealers are already subject under Rule G-37. The provisions of Rule G-8 and G-9 concerning Rule G-37 recordkeeping and preservation would change references to Forms G-37 and 37x to Forms G-37/G-42 and G-37x/G-42x. References to receipts of mailing the forms would also be removed, because the forms would only be submitted electronically.

**RESTATED RULE G-37 INTERPRETIVE NOTICE**

The Rule G-37 Interpretive Notice was drafted before municipal advisors to municipal entities were subject to a federal fiduciary duty and includes language providing guidance on the application of the ban on municipal securities business in circumstances where a non­*-de minimis* contribution occurs during the course of an existing financial advisory relationship. Proposed Rule G-42 is inconsistent with the Rule G-37 Interpretive Notice, which would permit financial advisors to complete certain financial advisory engagements while continuing to receive compensation. Accordingly, the MSRB is proposing to restate the Rule G-37 Interpretive Notice to remove references to financial advisory services, which would instead be covered by proposed Rule G-42. A conforming change would also reference contributions made to officials of issuers to whom municipal finance professionals could vote at the time of the contribution.

Questions about this notice should be directed to Peg Henry, General Counsel, Market Regulation, or Leslie Carey, Associate General Counsel, at 703-797-6600.

August 19, 2011

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**TEXT OF PROPOSED RULE CHANGE****[[24]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn24)**

**Rule G-42 Political Contributions and Prohibitions on Municipal Advisory Activities**

**(a) *Purpose*. The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal advisory industry 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, and the public interest by: (i) prohibiting municipal advisors from engaging in municipal advisory business with municipal entities for compensation, soliciting third-party business from municipal entities for compensation, and receiving compensation for the solicitation of third-party business, if certain political contributions have been made to officials of municipal entities; and (ii) requiring municipal advisors to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal advisory business and solicitations of a municipal advisor.**

**(b) *Ban on Municipal Advisory Business and Certain Solicitations*.**

**(i) No municipal advisor shall engage in municipal advisory business with a municipal entity for compensation, solicit third-party business from a municipal entity for compensation, or receive compensation for the solicitation of third-party business from a municipal entity, within two years after any contribution to an official of such municipal entity made by:**

**(A) the municipal advisor;**

**(B) any municipal advisor professional of such municipal advisor (other than a *de minimis* contribution); or**

**(C) any political action committee controlled by such municipal advisor or by a municipal advisor professional.**

**(ii) For an individual designated as a municipal advisor 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 a municipal entity prior to becoming a municipal advisor professional only if such individual solicits municipal advisory business from such municipal entity.**

**(iii) For an individual designated as a municipal advisor 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 advisor professional.**

**(iv) Notwithstanding paragraph (i) of this section, in the case of a municipal advisor engaged in municipal advisory business with a municipal entity, the prohibition on engaging in municipal advisory business for compensation provided for in paragraph (i) of this section shall begin on the date of the contribution described in such paragraph (i) and end two years after the date on which all of its municipal advisory business with the municipal entity has been terminated.**

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

**(i) No municipal advisor or any municipal advisor professional of such municipal advisor shall solicit any person, including, but not limited to, any affiliated company of the municipal advisor, or political action committee to make any contribution, or shall coordinate any contributions, to an official of a municipal entity with which the municipal advisor is engaging or is seeking to engage in municipal advisory business or is soliciting third-party business.**

**(ii) No municipal advisor or any individual designated as a municipal advisor professional of the municipal advisor shall solicit any person, including. but not limited to, any affiliated company of the 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 municipal advisor is engaging or is seeking to engage in municipal advisory business with a municipal entity or is soliciting third-party business; provided, however, that the provisions of this paragraph (ii) shall not apply to any individual designated as a municipal advisor professional of a municipal advisor pursuant to subparagraph (D) or (E) of paragraph (g)(iv) of this rule, if the municipal advisory activities in which such municipal advisor engages consist solely of municipal advisory business.**

**(d) *Circumvention of Rule*. No municipal advisor or any municipal advisor professional of such municipal advisor shall, directly or indirectly, through or by any other person or means, do any act that would result in a violation of section (b) or (c) of this rule.**

**(e) *Required Disclosure to Board.***

**(i) Except as otherwise provided in paragraph (e)(ii), each municipal advisor shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board Form G-37/G-42 setting forth, in the prescribed format, the following information:**

**(A) for contributions to officials of municipal entities (other than a contribution made by a municipal advisor professional or a non-MAP executive officer to an official of a municipal entity if all contributions by such person to such official of a municipal entity, in total, are *de minimis*) and payments to political parties of states and political subdivisions (other than a payment made by a municipal advisor professional or a non-MAP executive officer to a political party if all payments by such person to such political party, in total are *de minimis*) made by the persons described in clause (2) of this subparagraph (A):**

**(1) the name and title (including any city/county/state or political subdivision) of each official of a municipal entity and political party receiving contributions or payments during such calendar quarter, listed by state;**

**(2) the contribution or payment amount made and the contributor category of each of the following persons making such contributions or payments during such calendar quarter:**

**(a) the municipal advisor;**

**(b) each municipal advisor professional;**

**(c) each non-MAP executive officer; and**

**(d) each political action committee controlled by the municipal advisor or by any municipal advisor professional;**

**(B) for contributions to bond ballot campaigns (other than a contribution made by a municipal advisor professional or a non-MAP executive officer if all contributions by such person to such bond ballot campaign, in total, are *de minimis*) made by the persons described in clause (2) of this subparagraph (B):**

**(1) the official name of each bond ballot campaign receiving 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 and the contributor category of each of the following persons making such contributions during such calendar quarter:**

**(a) the municipal advisor;**

**(b) each municipal advisor professional;**

**(c) each non-MAP executive officer; and**

**(d) each political action committee controlled by the municipal advisor or by any municipal advisor professional;**

**(C) (1) in the case of municipal advisory business engaged in by the municipal advisor with or on behalf of municipal entities, a list of municipal entities with which or on behalf of which the municipal advisor has engaged in municipal advisory business during such calendar quarter, listed by state; and (2) in the case of third-party business that was the subject of a solicitation, a list of the third-party business awarded during the calendar quarter by state, along with the names of persons on behalf of which such third-party business was solicited and the nature of such third-party business;**

**(D) any information required to be included on Form G-37/G-42 for such calendar quarter pursuant to paragraph (e)(iii);**

**(E) such other identifying information required by Form G-37/G-42; and**

**(F) whether any contribution listed in this paragraph (e)(i) 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/G-42 received from any municipal advisor.**

**(ii) No municipal advisor shall be required to send Form G-37/G-42 to the Board for any calendar quarter in which either:**

**(A) such municipal advisor has no information that is required to be reported pursuant to subparagraphs (A) through (D) of paragraph (e)(i) for such calendar quarter; or**

**(B) such municipal advisor has not engaged in municipal advisory business with a municipal entity or made any solicitations described in subparagraph (g)(ix)(B), but only if such municipal advisor:**

**(1) had not engaged in municipal advisory business with a municipal entity or made any solicitations described in subparagraph (g)(ix)(B) during the seven consecutive calendar quarters immediately preceding such calendar quarter; and**

**(2) has sent to the Board completed Form G-37x/G-42x setting forth, in the prescribed format, (a) a certification to the effect that such municipal advisor did not engage in municipal advisory business with a municipal entity or make any solicitations described in subparagraph (g)(ix)(B) 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/G-42x regarding the obligations of such municipal advisor in connection with Forms G-37/G-42 and G-37x/G-42x under this paragraph (e)(ii) and Rule G-8(h)(i), and (c) such other identifying information required by Form G-37x/G-42x; provided that, if a municipal advisor has engaged in municipal advisory business with a municipal entity or made any solicitations described in subparagraph (g)(ix)(B) subsequent to the submission of Form G-37x/G-42x to the Board, such municipal advisor shall be required to submit a new Form G-37x/G-42x to the Board in order to again qualify for an exemption under this subparagraph (B). The Board shall make public a copy of each Form G-37x/G-42x received from any municipal advisor.**

**(iii) If a municipal advisor engages in municipal advisory business with a municipal entity or makes any solicitations described in subparagraph (g)(ix)(B) during any calendar quarter after not having reported on Form G-37/G-42 the information described in subparagraph (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of subparagraph (B) of paragraph (e)(ii), such municipal advisor shall include on Form G-37/G-42 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.**

**(iv) A municipal advisor that submits Form G-37/G-42 or Form G-37x/G-42x to the Board shall submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37/G-42 and G-37x/G-42x*.**

**(f) *Voluntary Disclosure to Board*. The Board will accept additional information related to contributions made to officials of municipal entities and payments to political parties of states and political subdivisions voluntarily submitted by municipal advisors or others provided that such information is submitted in accordance with section (e) of this rule.**

**(g) *Definitions*.**

**(i) The term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state, or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office.**

**(ii) The term “*de minimis*,” when used in connection with contributions made by a municipal advisor professional or a non-MAP executive officer, refers to contributions made: (A) to bond ballot campaigns for a ballot initiative for which such municipal advisor professional or non-MAP executive officer was entitled to vote at the time of the contribution and which contributions, in total, were not in excess of $250 per ballot initiative, or (B) to officials of a municipal entity for whom the municipal advisor professional or non-MAP executive officer was entitled to vote at the time of the contribution and which contributions, in total, were not in excess of $250 to each official of such municipal entity, per election. The term *“de minimis”* when used in connection with payments made by a municipal advisor professional or a non-MAP executive officer, refers to payments to political parties of states and political subdivisions in which such municipal advisor professional or non-MAP executive officer was entitled to vote at the time of the payment and which payments, in total, do not exceed $250 per year.**

**(iii) The term “municipal advisor” used in this rule does not include its associated persons.**

**(iv) The term "municipal advisor professional" means:**

**(A) any associated person engaged in municipal advisory business with a municipal entity;**

**(B) any associated person (including, but not limited to, any affiliated person of the municipal advisor) who solicits municipal advisory business with a municipal entity on its own behalf or solicits third-party business;**

**(C) any associated person who is a supervisor of the municipal advisory activities of any persons described in subparagraphs (A) or (B);**

**(D) any associated person who is a supervisor of the municipal advisory activities of any person described in subparagraph (C) up through and including the Chief Executive Officer or similarly situated official; or**

**(E) any associated person who is a member of the municipal advisor’s executive or management committee or similarly situated officials, if any.**

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

**(v) The term "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, but does not include any municipal advisor professional, as defined in paragraph (iv) of this section (g).**

**Each person designated by the municipal advisor as a non-MAP executive officer pursuant to Rule G-8(h)(i) is deemed to be a non-MAP executive officer.**

**(vi) The term "official of a municipal entity" 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) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a municipal advisor by the municipal entity or the hiring of any person on behalf of which the municipal advisor is soliciting third-party business; or (B) for any elective office of a municipal entity, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a municipal advisor by a municipal entity or the hiring of any person on behalf of which the municipal advisor is soliciting third-party business.**

**(vii) The term “municipal advisory business” means 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.**

**(viii) The term "payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.**

**(ix) The term “solicit” means, except as used in section (c) of this rule, the taking of any action that would constitute a solicitation, and the term “solicitation” means a direct or indirect communication by any person with a municipal entity for the purpose of obtaining or retaining (A) municipal advisory business with a municipal entity or (B) third-party business. For purposes of section (c) of this rule, the term “solicit” means to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment. For purposes of this paragraph, an investment adviser to a covered investment pool in which a municipal entity is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the municipal entity.**

**(x) The term "affiliated person of the municipal advisor" means any person who is a partner, director, officer, or employee of the municipal advisor or of an affiliated company of the municipal advisor.**

**(xi) The term "affiliated company of the municipal advisor" means any entity directly or indirectly controlling, controlled by, or under common control with the municipal advisor.**

**(xii) The term "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.**

**(xiii) The term “covered investment pool” means:**

**(A) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) that is an investment option of a plan or program of a government entity (as defined in Rule 206(4)-5 under the Investment Advisers Act of 1940); or**

**(B) Any company that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)), but for the exclusion provided from that definition by either section 3(c)(1), section 3(c)(7) or section 3(c)(11) of that Act (15 U.S.C. 80a–3(c)(1), (c)(7) or (c)(11)).**

**(xiv) The term “third-party business” means an engagement by a municipal entity of a broker, dealer, municipal securities dealer, or municipal advisor (other than the municipal advisor that is soliciting the municipal entity) that does not control, is not controlled by, or is not under common control with, the person soliciting such third-party business for or in connection with municipal financial products or the issuance of municipal securities, or of an investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940) to provide investment advisory services to or on behalf of a municipal entity.**

**(h) *Application for Exemption*. The Commission may, upon application, exempt a municipal advisor, conditionally or unconditionally, from the prohibition under section (b) of this rule of engaging in municipal advisory business with a municipal entity for compensation, soliciting third-party business from a municipal entity for compensation, or receiving compensation for the solicitation of third-party business from a municipal entity. In determining whether to grant such exemption, the Commission may consider, among other factors that it may deem relevant:**

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

**(ii) whether such municipal advisor (A) prior to the time the contribution(s) that 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) that 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) that 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 municipal advisor;**

**(iii) whether, at the time of the contribution, the contributor was a municipal advisor professional or otherwise an employee of the municipal advisor, or was seeking such employment;**

**(iv) the timing and amount of the contribution that 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 that resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.**

**(i) *Automatic Exemptions*.**

**(i) A municipal advisor that is prohibited from engaging in municipal advisory business with a municipal entity for compensation, soliciting third-party business from a municipal entity for compensation, or receiving compensation for the solicitation of third-party business from a municipal entity pursuant to section (b) of this rule as a result of a contribution made by a municipal advisor professional may exempt itself from such prohibition, subject to paragraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (A) the municipal advisor must have discovered the contribution that resulted in the prohibition on business, for compensation, within four months of the date of such contribution; (B) such contribution must not have exceeded $250; and (C) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the municipal advisor.**

**(ii) A municipal advisor is entitled to no more than two automatic exemptions during any 12-month period.**

**(iii) A municipal advisor may not execute more than one automatic exemption relating to contributions by the same municipal advisor professional regardless of the time period.**

**\* \* \* \* \***

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

(a)(i) - (xv) No change.

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

(A) - (I) No change.

(J) Brokers, dealers and municipal securities dealers shall maintain copies of the Forms G-37**/G-42** and G-37x**/G-42x** sent to the Board **~~along with the certified or registered mail receipt or other record of sending such forms to the Board~~**.

(K) - (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 G-37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker, dealer or municipal securities dealer that has been exempted by this clause (**~~K~~M**) 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.

(a)(xvii) - (xxiv) No change.

(b) – (g) No change.

**(h) Municipal Advisor Records.** Each municipal advisor shall maintain:

**(i) *Records Concerning Political Contributions and Prohibitions on Municipal Advisory Activities Pursuant to Rule G-42.* 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 with municipal entities or soliciting third-party business (as defined in Rule G-42(g)(xiv)) from a municipal entity;**

**(D) in the case of municipal advisory business engaged in by the municipal advisor with or on behalf of municipal entities, a list of municipal entities with which the municipal advisor has engaged in municipal advisory business, along with the type of municipal advisory business with municipal entities engaged in, during the current year and separate listings for each of the previous two calendar years; and (2) in the case of third-party business, a list of the third-party business awarded, along with the names of the persons on behalf of which such business was solicited and the nature of such third-party business, 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-42(i), 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 *de minimis* contribution made by a municipal advisor professional or non-MAP executive officer. 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 those individuals meeting the definition of municipal advisor professional pursuant to subparagraphs (A) and (B) of Rule G-42(g)(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 those individuals meeting the definition of municipal advisor professional pursuant to subparagraphs (C), (D) and (E) of Rule G-42(g)(iv) and for any political action committee controlled by such individuals and for any non-MAP executive officers; and**

**(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 that are *de minimis*. 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 those individuals meeting the definition of municipal advisor professional pursuant to subparagraphs (A) and (B) of Rule G-42(g)(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 those individuals meeting the definition of municipal advisor professional pursuant to subparagraphs (C), (D) and (E) of Rule G-42(g)(iv) 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, and (iii) the amounts and dates of such contributions;**

**(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, and (iii) the amounts and dates of such contributions; 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 that is *de minimis*.**

**(J) Municipal advisors shall maintain copies of the Forms G-37/G-42 and G-37x/G-42x sent to the Board.**

**(K) Terms used in this paragraph (i) have the same meaning as in Rule G-42.**

**(L) No municipal advisor shall be subject to the requirements of this paragraph (i) during any period that such municipal advisor has qualified for and invoked the exemption set forth in subparagraph (B) of paragraph (e)(ii) of Rule G-42; provided, however, that such municipal advisor shall remain obligated to comply with subparagraph (H) of this paragraph (i) during such period of exemption. At such time as a municipal advisor that has been exempted by this subparagraph (L) from the requirements of this paragraph (i) engages in any municipal advisory business with municipal entities, all requirements of this paragraph (i) 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.**

(ii) Reserved.

(iii) Reserved.

(i) Reserved.

**\* \* \* \* \***

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

(a) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor shall preserve for no less than six years:

**(i) the records to be maintained pursuant to Rule G-8(h)(i); provided, however, that copies of Forms G-37x/G-42x shall be preserved for the period during which such Forms G-37x/G-42x are effective and for at least six years following the end of such effectiveness.**

**\* \* \* \* \***

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

(a) No change.

(b) *Ban on Municipal Securities Business*.

(i) (A) No change.

(B) any municipal finance professional **of** **~~associated with~~** such broker, dealer or municipal securities dealer; or

(C) No change.

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 **at the time of the contribution** and which contributions, in total, were not in excess of $250 by any municipal finance professional to each official of such issuer, per election.

(ii) - (iii) No change.

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

(i) No broker, dealer or municipal securities dealer or any municipal finance professional of **such** **~~the~~** broker, dealer or municipal securities dealer shall solicit any person, including, but not limited to, any affiliated **company** **~~entity~~** of the broker, dealer or municipal securities dealer, or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

(ii) No broker, dealer or municipal securities dealer 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 **company ~~entity~~** of the broker, dealer or municipal securities dealer, 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 is engaging or is seeking to engage in municipal securities business.

(d) No change.

(e) *Required Disclosure to Board.*

(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board Form G-37**/G-42** setting forth, in the prescribed format, the following information:

(A) for contributions to officials of issuers (other than a contribution made by a municipal finance professional or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote **at the time of the contribution,** if all contributions by such person to such official of an issuer, in total, do not exceed $250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional or a non-MFP executive officer to a political party of a state or a political subdivision in which such person is entitled to vote **at the time of the contribution,** 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):

(1) - (2) No change.

(B) for contributions to bond ballot campaigns (other than a contribution made by a municipal finance professional or a non-MFP executive officer to a bond ballot campaign for a ballot initiative **for** **~~with respect to~~** which such person is entitled to vote **at the time of the contribution,** 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):

(1) – (2) No change.

(C) No change.

(D) any information required to be included on Form G-37**/G-42** for such calendar quarter pursuant to paragraph (e)(iii);

(E) such other identifying information required by Form G-37**/G-42**; and

(F) No change.

The Board shall make public a copy of each Form G-37**/G-42** received from any broker, dealer or municipal securities dealer.

(ii) No broker, dealer or municipal securities dealer shall be required to send Form G-37/G-42 to the Board for any calendar quarter in which either:

(A) No change.

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

(1) No change.

(2) has sent to the Board completed Form G-37x**/G-42x** setting forth, in the prescribed format, (a) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x**/G-42x** regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G-37**/G-42** and G-37x**/G-42x** under this paragraph (e)(ii) and rule G-8(a)(xvi), and (c) such other identifying information required by Form G-37x**/G-42x**; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G-37x**/G-42x** to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G-37x**/G-42x** 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/**G-42x** received from any broker, dealer or municipal securities dealer.

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G-37**/G-42** the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (B) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G-37**/G-42** for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(iv) A broker, dealer or municipal securities dealer that submits Form G-37**/G-42** or Form G-37x**/G-42x** 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****/G-42*** *and G-37x****/G-42x***.

(f) No change.

(g) *Definitions*.

(i) - (iii) No change.

(iv) The term "municipal finance professional" means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i) **without regard to subparagraph (B) thereof**, provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

(B) 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;

(C) - (E) No change.

(v) - (vi) No change.

(vii) The term "municipal securities business" means:

(A) - (B) No change.

**~~(C) the provision of financial advisory or consultant services to or on behalf of an issuer 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~~**

(**C~~D~~**) the provision of remarketing agent services to or on behalf of an issuer 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.

(viii) No change.

(ix) Except as used in section (c) **of this rule**, the term “solicit” means **~~the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i)~~ to communicate directly or indirectly with an issuer for the purpose of obtaining or retaining municipal securities business**. **For purposes of section (c) of this rule, the term “solicit” means to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment.**

(x) No change.

**(xi) The term "affiliated person of the broker, dealer or municipal securities dealer” means any person who is a partner, director, officer, or employee of the broker, dealer or municipal securities dealer or of an affiliated company of the broker, dealer or municipal securities dealer.**

**(xii) The term "affiliated company of the broker, dealer or municipal securities dealer" means any entity directly or indirectly controlling, controlled by, or under common control with the broker, dealer or municipal securities dealer.**

(h) - (i) No change.

(j) *Automatic Exemptions*.

(i) No change.

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

(iii) No change.

**\* \* \* \* \***

**Form G-37/G-42****[[25]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn25)**

**(Items to be provided pursuant to Rule G-37(e) and Rule G-42(e), for each calendar quarter.**

**For filings pursuant to Rule G-37(e):**

**(1) The name of the broker, dealer, or municipal securities dealer (“dealer”).**

**(2) The report period.**

**(3) The contributions made to issuer officials by state, contributor category, and contribution amount.**

**(4) The complete name and title (including any city/county/state or other political subdivision) of each issuer official.**

**(5) The amount of contribution and the date of automatic exemption, if any contribution is the subject of an automatic exemption pursuant to Rule G-37(j).**

**(6) The payments made to political parties of states, cities, counties, or other political subdivisions, by state, contributor category, and payment amount.**

**(7) The complete name (including any city/county/state or other political subdivision) of the political party.**

**(8) The contributions made to bond ballot campaigns, by state, contributor category, and contribution amount.**

**(9) The official name of the bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued.**

**(10) The type of municipal securities business the dealer has engaged in, by state.**

**(11) The complete name of the issuer and the city/county with which dealer has engaged in municipal securities business.**

**(12) The name, address, and phone number of the officer of the dealer submitting the form.**

**For filings pursuant to Rule G-42(e):**

**(1) The name of the municipal advisor.**

**(2) The report period.**

**(3) The contributions made to officials of municipal entities, by state, contributor category, and contribution amount.**

**(4) The complete name and title (including any city/county/state or other political subdivision) of each official of a municipal entity.**

**(5) The amount of contribution and the date of automatic exemption, if any contribution is the subject of an automatic exemption pursuant to Rule G-42(i).**

**(6) The payments made to political parties of states, cities, counties, or other political subdivisions, by state, contributor category, and payment amount.**

**(7) The complete name (including any city/county/state or other political subdivision) of the political party.**

**(8) The contributions made to bond ballot campaigns, by state, contributor category, and contribution amount.**

**(9) The official name of the bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued.**

**(10) The complete names of the municipal entities with which, or on behalf of which, the municipal advisor has engaged in municipal advisory business, by state.**

**(11) The third-party business awarded that was the subject of a solicitation by the municipal advisor, by state.**

**(12) The complete name of the persons on behalf of which the third-party business was solicited and the type of third-party business awarded.**

**(13) The name, address, and phone number of the officer of the municipal advisor submitting the form.**

**\* \* \* \* \***

**Form G-37x/G-42x****[[26]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftn26)**

**(Items to be provided pursuant to Rule G-37(e) and Rule G-42(e)**

**(1) The name of the dealer or the municipal advisor.**

**(2) A certification that the dealer or municipal advisor did not engage in “municipal securities business” (as defined in Rule G-37) or “municipal advisory business” (as defined in Rule G-42), as applicable, during the eight full consecutive calendar quarters ending immediately on or prior to the date of the Form G-37x/G-42x.**

**(3) If Form G-37x/G-42x is filed pursuant to Rule G-37(e), an acknowledgement that, notwithstanding the submission of Form G-37x/G-42x to the MSRB, such dealer will be required to:**

**(a) submit Form G-37/G-42 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;**

**(b) undertake the recordkeeping obligations set forth in Rule G-8(a)(xvi) at such time as it no longer qualifies for the exemption set forth in Rule G-8(a)(xvi)(M);**

**(c) 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**

**(d) submit a new Form G-37x/G-42x 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 has engaged in municipal securities business subsequent to the date of this Form G-37x/G-42x and thereafter wishes to qualify for said exemption.**

**(4) If Form G-37x/G-42x is filed pursuant to Rule G-42(e), an acknowledgement that, notwithstanding the submission of Form G-37x/G-42x to the MSRB, such municipal advisor will be required to:**

**(a) submit Form G-37/G-42 for each calendar quarter unless it has met all of the requirements for an exemption set forth in Rule G-42(e)(ii) for such calendar quarter;**

**(b) undertake the recordkeeping obligations set forth in Rule G-8(h)(i) at such time as it no longer qualifies for the exemption set forth in Rule G-8(h)(i)(M);**

**(c) undertake the disclosure obligations set forth in Rule G-42(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-42(e)(ii)(B); and**

**(d) submit a new Form G-37x/G-42x in order to again meet the requirements for the exemption set forth in Rule G-42(e)(ii)(B) in the event that the municipal advisor has engaged in municipal advisory business subsequent to the date of this Form G-37x/G-42x and thereafter wishes to qualify for said exemption.**

**(5) The name, address, and phone number of the officer of the dealer or municipal advisor submitting the form.**

**\* \* \* \* \***

**TEXT OF DRAFT RESTATED G-37 INTERPRETIVE NOTICE**

**INTERPRETATION OF PROHIBITION ON MUNICIPAL SECURITIES BUSINESS PURSUANT TO RULE G-37 - February 21, 1997, RESTATED**

Recently, dealers have raised questions regarding how the prohibition on municipal securities business in Rule G-37, on political contributions and prohibitions on municipal securities business, applies to certain situations. Rule G-37 prohibits any dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional.[1] If a municipal finance professional makes a political contribution to an issuer official for whom he is not entitled to vote **at the time of the contribution**, the dealer is prohibited from engaging in municipal securities business with that issuer for two years. The Board has been asked whether the prohibition on municipal securities business extends to certain services provided under contractual agreements with an issuer that pre-date the contribution. The Board is issuing the following interpretation of the prohibition on municipal securities business pursuant to Rule G-37.

**"New" Municipal Securities Business**

A dealer subject to a prohibition on municipal securities business with an issuer may not enter into any new contractual obligations with that issuer for municipal securities business.[2] The Board adopted Rule G-37 in an effort to sever any connection between the making of political contributions and the awarding of municipal securities business. The Board believes that the problems associated with political contributions––including the practice known as "pay-to-play"––undermine investor confidence in the municipal securities market, which confidence is crucial to the long-term health of the market, both in terms of liquidity and capital-raising ability.

**Pre-Existing Issue-Specific Contractual Undertakings**

The Board believes that it is consistent with the intent of Rule G-37 that a dealer subject to a prohibition on municipal securities business with an issuer be allowed to continue to execute certain issue-specific contractual obligations in effect prior to the date of the contribution that caused the prohibition. For example, if a bond purchase agreement was signed prior to the date of the contribution, a dealer may continue to perform its services as an underwriter on the issue. **~~Also, if an issue-specific agreement for financial advisory services was in effect prior to the date of the contribution, the dealer may continue in its role as financial advisor for that issue.~~** In the same manner, a dealer may act as remarketing agent or placement agent**[3]** for an issue and also may continue to underwrite a commercial paper program as long as the contract to perform these services was in effect prior to the date of the contribution. Subject to the limitations noted below, these activities are not considered new municipal securities business and thus can be performed by dealers under a prohibition on municipal securities business with the issuer.

Dealers also have asked questions regarding certain terms in contracts to provide on-going municipal securities business that allow for additional services or compensation. For example, a dealer may have an agreement to provide remarketing services for a municipal securities issue, the terms of which allow the issuer to change the "mode" of the outstanding bonds from variable to a fixed rate of interest or from Rule 2a-7 eligible to non-Rule 2a-7 eligible.**~~3~~[4]** Generally, the per bond fee increases if the dealer sells fixed rate municipal securities or non-money market fund securities. Also, an agreement to underwrite a commercial paper program may include terms for increasing the size of the program. While the per bond fee probably does not increase if more commercial paper is underwritten, the amount of money paid to the dealer does increase. The Board views the provisions in existing contracts that allow for changes in the services provided by the dealer or compensation paid by the issuer as new municipal securities business and, therefore, Rule G-37 precludes a dealer subject to a prohibition on municipal securities business from performing such additional functions or receiving additional compensation.

**~~Non-Issue Specific Contractual Undertakings~~**

**~~Dealers also at times enter into long-term contracts with issuers for municipal securities business,~~ *~~e.g.~~*~~, a five-year financial advisory agreement. If a contribution is given after such a non-issue-specific contract is entered into that results in a prohibition on municipal securities business, the Board believes the dealer should not be allowed to continue with the municipal securities business, subject to an orderly transition to another entity to perform such business. This transition should be as short a period of time as possible and is intended to give the issuer the opportunity to receive the benefit of the work already provided by the dealer and to find a replacement to complete the work, as needed.~~**

**\* \* \***

The Board recognizes that there is a great variety in the terms of agreements regarding municipal securities business and that the interpretation noted above may not adequately deal with all such agreements. Thus, the Board is seeking comment on how a prohibition on municipal securities business pursuant to Rule G-37 affects contracts for municipal securities business entered into with issuers prior to the date of the contribution triggering the prohibition on business. In particular, the Board is seeking comment on other examples whereby a dealer may be contractually obligated to perform certain activities after the date of the triggering contribution. If other examples are provided, the Board would like comments on how these situations should be addressed pursuant to Rule G-37.

Based upon the comments received on this notice, the Board may issue additional interpretations or amend the language of Rule G-37.

[1] The only exception to Rule G-37’s absolute prohibition on municipal securities business is for certain contributions made to issuer officials by municipal finance professionals. Contributions by such persons to officials of issuers do not invoke application of the prohibition on business if (i) the municipal finance professional is entitled to vote for such official **at the time of the contribution** and (ii) contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election.

[2] The term "municipal securities business" is defined in the rule to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), **~~financial advisors,~~** placement agents and negotiated remarketing agents. The rule does not prohibit dealers from engaging in business awarded on a competitive bid basis.

[3] **For purposes of this notice, a placement agent is a person that offers or sells a primary offering of municipal securities on behalf of an issuer (e.g., private placement)*. See* Rule G-37(g)(vii).**

**[4]** SEC Rule 2a-7 under the Investment Company Act of 1940 defines eligible securities for inclusion in money market funds.

[[1]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftnref1) [File No. SR-MSRB-2011-12](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~/media/Files/SEC-Filings/2011/SR-MSRB-2011-12.ashx). Comments on the proposed rule change should be submitted to the SEC and should reference this file number.

[[2]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx#_ftnref2) Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G-37 (February 21, 1997), reprinted in MSRB Rule Book.

[[3]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref3) As described in more detail below, under proposed Rule G-42(b)(i) certain contributions could result in a ban on municipal advisory business for compensation, a ban on solicitations of third-party business for compensation, and a ban on the receipt of compensation for the solicitation of third-party business.

[[4]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref4) Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[[5]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref5) “Municipal entity” is defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (the “Exchange Act”) as

any State, political subdivision of a State, or municipal corporate instrumentality of a State, including— (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.

[[6]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref6) *See* [MSRB Notice 2011-04 (January 14, 2011)](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-04.aspx).

[[7]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref7) Proposed Rule G-42(g)(ii) would provide in pertinent part:

The term “*de minimis*,” when used in connection with contributions made by a municipal advisor professional or a non-MAP executive officer, refers to contributions made . . . to officials of a municipal entity for whom the municipal advisor professional or non-MAP executive officer was entitled to vote at the time of the contribution and which contributions, in total, were not in excess of $250 to each official of such municipal entity, per election.

[[8]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref8) *See* proposed Rule G-42(b)(i).

[[9]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref9) Proposed Rule G-42(g)(xiv) would provide that

“third-party business” means an engagement by a municipal entity of a broker, dealer, municipal securities dealer, or municipal advisor (other than the municipal advisor that is soliciting the municipal entity) that does not control, is not controlled by, or is not under common control with, the person soliciting such third-party business for or in connection with municipal financial products or the issuance of municipal securities, or of an investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940) to provide investment advisory services to or on behalf of a municipal entity.

[[10]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref10) *See* proposed Rule G-42(b)(i).

[[11]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref11) *See* proposed Rule G-42(c)(i).

[[12]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref12) *See* proposed Rule G-42(c)(ii). An exception from this prohibition would be provided for certain supervisors and executives of municipal advisors that are only municipal advisors because they provide advice to municipal entities or obligated persons and do not solicit any third-party business from municipal entities.

[[13]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref13) *See* proposed Rule G-42(d).

[[14]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref14) *See* proposed Rule G-42(e).

[[15]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref15) *See* proposed Rule G-42(h).

[[16]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref16) *See* proposed Rule G-42(i).

[[17]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref17) *See* proposed Rule G-42(b)(i). Limitations on the look-back provision would apply to persons who are municipal advisor professionals only due to: (i) their solicitation of municipal advisory business (only contributions to officials of municipal entities solicited would count) or (ii) their supervisory activities (only six-month look back). *See* proposed Rule G-42(b)(ii) and (iii), respectively. The limitation on the look-back provision for persons who are only municipal advisor professionals as a result of solicitation activities would only apply to persons who solicit municipal advisory business on their own behalf. It would not apply to persons who solicit third-party business, who would be subject to the regular two-year look-back provision.

[[18]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref18) *See* proposed Rule G-42(g)(iv).

[[19]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref19) Proposed Rule G-42(g)(x) would define the term "affiliated person of the municipal advisor" to mean “any person who is a partner, director, officer, or employee of the municipal advisor or of an affiliated company of the municipal advisor.”

[[20]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref20) *See* proposed Rule G-42(g)(vi).

[[21]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref21) Reimbursements of costs would be considered compensation whether for out-of-pocket costs or internal costs.

[[22]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref22) Form G-37/G-42 would require the submission of the information described in proposed Rule G-42(e) and would be submitted by municipal advisors through the existing MSRB Political Contribution Submission Service, which is the service that would accept the submissions of Form G-37/G-42. Submitted Forms G-37/G-42 would be made publicly available through the MSRB website. Under the proposed rule, Form G-37x/G-42x would be filed by a municipal advisor that is no longer engaged in municipal advisory business for municipal entities or the solicitation activities covered by the rule (*e.g*., a municipal advisor that is no longer providing advice to, or soliciting, municipal entities but is still engaged in providing advice to obligated persons).

[[23]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref23) Proposed Rule G-42 would not require municipal advisors to disclose the names of individual MAPs and executive officers. Further, proposed Rule G-42 would not require municipal advisors to maintain a list of contributions or payments by other employees, affiliated companies, and their employees, spouses of MAPs, or any other person unless the contributions or payments were directed by persons subject to proposed Rule G-42.

[[24]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref24) Underlining indicates additions; strikethrough indicates deletions.

[[25]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref25) Paper Form G-37 is replaced in its entirety by electronic Form G-37/G-42.

[[26]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx%22%20%5Cl%20%22_ftnref26) Paper Form G-37x is replaced in its entirety by electronic Form G-37x/G-42x.