SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52235; File No. SR-MSRB-2005-12)

August 10, 2005

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Concerning Solicitation and Coordination of Payments to Political Parties and Question and Answer Guidance on Supervisory Procedures Related to Rule G-37(d) on Indirect Violations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 27, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The MSRB has filed with the SEC a proposed rule change consisting of an amendment to Rule G-37(c), concerning solicitation and coordination of payments to political parties, and Q&A guidance on supervisory procedures related to Rule G-37(d), on indirect violations. The text of the proposed rule change is available on the MSRB's Web site (http://www.msrb.org), at the MSRB's principal office, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

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

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

1. Purpose

Rule G-37(c) prohibits a dealer and its municipal finance professionals ("MFPs") from soliciting any person or political action committee ("PAC") to make or coordinate contributions to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business. The proposed amendments would also prohibit the dealer and certain MFPs[3] from soliciting any person or PAC to make or coordinate a payment to a political party of a state or locality where the dealer is engaging or is

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[3] The proposed amendment limits MFPs who would be prohibited from soliciting or coordinating political party payments to those persons who are directly involved in the dealer's municipal securities business. The proposed language provides that only MFPs who are primarily engaged in municipal representative activities, solicitors of municipal securities business, or direct supervisors of MFPs that are "solicitors" or "primarily engaged" are prohibited from soliciting political party payments. The MSRB limited those MFPs covered by the proposed amendments to those directly involved in the municipal securities business of the dealer; recognizing that other MFPs more distant from the day-to-day operations of the dealer's municipal securities business may have other reasons to solicit or coordinate payments to political parties (i.e., reasons related to other business activities of the dealer).

seeking to engage in municipal securities business.[4] The proposed rule amendments would specifically define any "person"[5] to include any affiliated entity of the dealer. This clarification is intended to alert dealers and MFPs that influencing the disbursement decisions of affiliated entities or PACs may constitute a direct violation of Rule G-37(c), as amended, if the dealer or MFP solicits the affiliated entity or PAC to make or coordinate contributions to an official of an issuer or a political party of a state or locality where the dealer is engaging or is seeking to engage in municipal securities business. Accordingly, in order to ensure compliance with Rule G-37(c), dealers should consider the adequacy of their information barriers with affiliated entities, or PACs controlled by affiliated entities, to ensure that the affiliated entities' contributions, payments, or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to its MFPs.

The proposed Q&A guidance provides that, in order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political

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4 The MSRB notes that, depending upon the facts and circumstances, an MFP's solicitation of a contribution to an issuer with which the dealer is engaging or is seeking to engage in municipal securities business or the solicitation of a political party payment to a political party of a state or locality where the dealer is engaging or is seeking to engage in municipal securities business, may also constitute a violation of Rule G-37(d) on indirect violations.

5 "Person" is defined in § 3(a)(9) of the Act, to mean "a natural person, company, government, or political subdivision, agency, or instrumentality of a government." Unless the context otherwise specifically requires, the terms used in MSRB rules have the meanings set forth in the Act. See MSRB Rule D-1.

parties and non-dealer controlled PACs to contribute indirectly to an official of an issuer.[6] The draft Q&A guidance also explicitly states that contributing to "housekeeping", "conference" or "overhead" type accounts is not a safe harbor and does not alleviate the dealer's supervisory obligation to conduct this due diligence.

The Qs&As seek to provide dealers with more guidance as they develop procedures to ensure compliance with both the language and the spirit of Rule G-37. The Qs&As emphasize the necessity for adequate supervisory procedures to ensure compliance with Rule G-37(d) not only with respect to payments to political parties, but also with respect to contributions to and disbursements by dealer-affiliated (but not controlled) PACs. The Board reminds dealers that a failure to implement satisfactory written procedures to ensure compliance with Rule G-37(d) could subject the dealer to enforcement actions by the appropriate regulatory authorities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[7] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism

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6 In addition, pursuant to MSRB Rule G-8(a)(xx), on records concerning compliance with Rule G-27, each dealer must maintain and keep current the records required under Rules G-27(c) and G-27(d).

7 15 U.S.C. 78o-4(b)(2)(C).

of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will help inhibit practices that create the appearance of attempting to influence the awarding of municipal securities business through an indirect violation of Rule G-37. The MSRB also believes that the Q&A guidance will facilitate dealer compliance with Rule G-27, on supervision, and Rule G-37(d)'s prohibitions on indirect rule violations.

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

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On February 15, 2005 the MSRB published for industry comment draft amendments to Rule G-37(c), concerning solicitation and coordination of payments to political parties, and draft Q&A guidance on supervisory procedures related to Rule G-37(d), on indirect violations (the "Notice").[8] The MSRB received seven comments on the Notice.[9]

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[8] See MSRB Notice 2005-11 (February 15, 2005).

[9] The Board received comment letters from the following: Sarah A. Miller, General Counsel, ABASA Securities Association ("ABASA") to Carolyn Walsh, Senior Associate General Counsel, MSRB, dated April 11, 2005; J. Cooper Petagna, Jr., President, American Municipal Securities, Inc. ("American Municipal") to Ms. Walsh, dated March 10, 2005; Robert E. Foran, Senior Managing Director, Bear Stearns & Co., Inc. ("Bear Stearns") to Ms. Walsh, dated March 31, 2005; Leslie M. Norwood, Vice-President and Assistant General Counsel, Bond Market Association ("BMA") to Ms. Walsh, dated April 1, 2005;

Of the seven commentators, one commentator, American Municipal, supports the adoption of the amendments to Rule G-37 and the proposed Qs&As because they will strengthen the effectiveness of the rule in preventing improper political contributions.[10] One commentator, Griffin, Kubik, believes that the existing structure of Rule G-37 is unconstitutional and complains about the existing operation of Rule G-37.[11] Griffin, Kubik also suggests that requiring full and immediate disclosure of dealer contributions by the recipient issuer official would be more effective in policing this arena.

The remaining five commentators express support for the MSRB's efforts to eliminate any vestiges of pay-to-play in the municipal securities industry, whether they are in the form of a direct or indirect contribution to an issuer official. However, ABASA, BMA[12], SIA and UBS assert that the Qs&As are vague thus making it impossible for broker-dealers to know exactly what standard to apply. ABASA, BMA,

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Robert J. Stracks, Counsel, Griffin, Kubik, Stephens & Thompson, Inc. ("Griffin, Kubik") to Ms. Walsh, dated March 30, 2005; Marc E. Lackritz, President, Securities Industry Association ("SIA") to Ms. Walsh, dated April 5, 2005; and Terry L. Atkinson, Managing Director, UBS Financial Services Inc. ("UBS") to Ms. Walsh, dated April 1, 2005.

10 American Municipal also suggests that consideration be given to having the rule applied to all registered personnel and not just MFPs.

11 This commentator complains that if an associated person of a dealer introduces or solicits municipal securities business for the dealer while at the same time making political contributions to an official of a completely different local political body, the broker-dealer could face a G-37 compliance problem. In fact, assuming this was the first time the associated person solicited municipal securities business for the dealer, the contribution to an issuer official who is not the issuer official solicited would not result in a ban on doing business with the introduced issuer. It would, however, result in the associated person becoming a municipal finance professional of the dealer and being subject to Rule G-37 from the date of the solicitation activity forward.

12 Because the Bear Stearns comment letter simply states that it supports the BMA letter, for the purposes of this discussion Bear Stearns' positions will not be separately identified. Rather, it should be understood that positions attributed to BMA are also supported by Bear Stearns.

SIA and UBS request that the MSRB clarify the proposed Qs&As as they relate to contributions to party committees and PACs so that they establish clear standards upon which the industry may rely. BMA, SIA and UBS request that the MSRB expressly state that contributions made to national party committees and certain federal leadership PACs (controlled by members of Congress) are permitted. BMA and UBS also request that the MSRB: (1) acknowledge that the proposed Qs&As reflect a new approach to Rule G-37's prohibition on indirect contributions and not just a restatement of the existing standard; (2) modify the prohibition on soliciting contributions to state or local parties so that broker-dealers and MFPs would be permitted to solicit contributions to the same extent they are able to make a contribution to them; and (3) clarify what is meant by "affiliated PAC" for purposes of erecting an informational barrier.[13] ABASA also states that the MSRB's suggested information barrier concerning past and current municipal securities business is unrealistic because much of the information is public. These specific comments are discussed in detail below.

The Draft Amendments to Rule G-37(c)(ii): The Prohibition on Soliciting Contributions to State and Local Party Committees Should be Symmetrical to the Contributions Ban.

Comments Received. BMA and UBS assert that the Rule G-37(c) amendment should be symmetrical to the contributions ban because they do not believe it makes sense to impose a greater, absolute prohibition on soliciting contributions than on making contributions. BMA recommends that dealers and MFPs be permitted to solicit contributions to the same extent they are allowed to make contributions.

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[13] Griffin, Kubik also seeks this clarification.

MSRB Response. The proposed rule amendment is more limited than what the comment letters portray. The comment letters state that the amendment would completely prohibit MFPs from soliciting contributions to any state and local party committees when, in fact, it only prohibits solicitations by the dealer or certain MFPs for contributions to a political party of a state or locality where the dealer is engaging or is seeking to engage in municipal securities business. Thus, the proposed amendment is narrowly tailored to regulate only a dealer's or certain MFP's solicitation of other persons' payments to political parties when there can be a perception that MFPs and dealers are soliciting others to make payments to parties or PACs as an end-run around the rule and the rule's disclosure requirements.

Current Rule G-37(c) operates as an absolute prohibition on soliciting contributions for an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business and is not symmetrical with Rule G-37(b) because there is no de minimis exception in Rule G-37(c). Moreover, because dealers' and MFPs' payments to political parties do not trigger the automatic ban on business (unless there is an indirect violation) there is no mechanism to correlate the party payment disclosure scheme in Rule G-37 with the proposed prohibition on the solicitation and coordination of payments to political parties of states or localities where the dealer is engaging or seeking to engage in municipal securities business.

The MSRB determined that allowing dealers or certain MFPs to solicit other persons to make political party or PAC payments in states and localities where they are engaging or seeking to engage in municipal securities business creates at least the appearance of attempting to influence the awarding of municipal securities business

through such payments. Moreover, without the proposed prohibition, it would be very difficult for enforcement agencies to detect such potential indirect violations because the parties solicited do not have to disclose the payments. Additionally, the arguably stricter prohibition can be justified because a violation of Rule G-37(c) does not result in an automatic ban on business.

Vagueness of the Proposed Q&A Guidance Concerning Rule G-27, on Supervision, and Rule G-37(d), on Indirect Violations.

Comments Received. ABASA, BMA, SIA, and UBS request that the Qs&As be clarified because they do not present a clear objective standard as to when party and PAC contributions should be treated as indirect contributions to issuer candidates. BMA, SIA and UBS also complain that the Qs&As represent an expansion of Rule G-37. BMA suggests that if the MSRB's intent is to absolutely eliminate state and local party committee and PAC contributions, it should come out with a clear prohibition.

MSRB Response. The MSRB's intent was not to eliminate all state and local party committee and PAC contributions or to specify which ones would not be indirect contributions to issuer officials. The MSRB recognizes that some payments to political parties are made for reasons that have no connection with influencing the awarding of municipal securities business. The MSRB's decision to issue the proposed Q&A guidance was prompted by concern that dealers are not implementing adequate supervisory procedures reasonably designed to prevent indirect rule violations. The MSRB also voiced its concern about the emergence of recent media and other reports that issuer agents have informed dealers and MFPs that, if they are prohibited from

contributing directly to an issuer official's campaign, they should contribute to the affiliated party's "housekeeping" account.

By voicing a concern that dealers who make such payments to parties or PACs may be doing so in an effort to avoid the political contribution limitations embodied in Rule G-37, the MSRB was not expanding the reach of Rule G-37. The MSRB was, however, alerting dealers to modern day political realities and practices that may prove—with hindsight—to be problematic. The MSRB was also suggesting, though not requiring, general supervisory procedures designed to help ensure that the party or PAC payments do not result in a violation of Rule G-37(d). Dealers are required to implement adequate supervisory procedures, but the MSRB's suggestions about general approaches to conducting adequate due diligence are not meant to be either required procedures or a safe harbor. Ideally, an adequate supervisory procedure will prevent a Rule G-37(d) violation, but the existence of adequate supervisory procedures may only protect the firm from a resulting Rule G-27 violation should a problem later occur. A payment permitted by the dealer's supervisory procedures may still result in a violation of Rule G-37(d) if it is later proven that the MFP in question contributed with the intent to circumvent the rule. Such instance, of course, could put the dealer in a good position to seek a waiver of the resulting ban on business from the NASD.

Moreover, the proposed Qs&As do not broaden the sphere of activity that is prohibited by Rule G-37. A violation of Rule G-37(d) still will only occur when the payment is made to other entities "as a means to circumvent the rule." Rule G-37(d), which prohibits anyone from "directly or indirectly, through or by any other person or means" doing what sections (b) and (c) prohibit has previously been challenged on the

grounds that it is unconstitutionally vague. The United States Court of Appeals in Blount v. SEC[14] rejected this challenge 10 years ago. In Blount, the Court stated,

> Although the language of section (d) itself is very broad, the SEC has interpreted it as requiring a showing of culpable intent, that is, a demonstration that the conduct was undertaken "as a means to circumvent" the requirements of (b) and (c). . . . The SEC states its "means to circumvent" qualification in general terms. The qualification appears, therefore, to apply not only to such items as contributions made by the broker's or dealer's family members or employees, but also gifts by a broker to a state or national party committee, made with the knowledge that some part of the gift is likely to be transmitted to an official excluded by Rule G-37. In short, according to the SEC, the rule restricts such gifts and contributions only when they are intended as end-runs around the direct contribution limitations.[15]

The Standards in the "Reasons Test" and "Activity Test" Need to be Clarified.

Comments Received. ABASA, BMA, SIA and UBS assert that the proposed Q&A guidance should be clarified with bright-line tests to identify the parties or PACs to which dealers and MFPs can make payments without violating Rule G-37(d), on indirect violations. In particular, the commentators object to the guidance that suggests that the dealer identify the reason for making the payment to the party or PAC (the "reasons test") without defining the motivation(s) that should result in a contribution being classified as

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14 Blount v. SEC, 61 F.3d 938, (D.C. Cir. 1995), rehearing and suggestion for rehearing en banc denied (1995), certiorari denied by 517 U.S. 1119, 116 S.Ct. 1351, 134 L.Ed.2d 520 (1996).

15 Id. at 948.

an indirect contribution to an issuer official. BMA suggests that the reasons test be clarified to only cover contributions to party committees and PACs that are controlled by, or where the contribution is solicited by, an issuer official.

The commentators also object to the suggestion that dealers make inquiries to essentially "follow the money" to reasonably ensure that the party or PAC is not supporting one or a limited number of issuer officials (the "activity test") on the grounds that it is unclear. BMA asserts that the language is unclear because it could mean one of two things: (1) if the party or PAC that receives the contribution supports even one issuer official, then an indirect ban is triggered; or (2) the dealer must determine that the party's or PAC's expenditures on issuer officials constitute a large enough portion of its total expenditures such that an indirect ban is triggered. BMA and UBS ask the MSRB to revise its guidance to suggest a test based on objective criteria. UBS suggests that this objective criteria include a "dilution standard" that would need to include at least the following elements: (1) a threshold--50%, 60% or 70%--of a party's or PAC's expenditures used for non-issuer purposes that would be sufficient to overcome a presumption that the committee supported one or a limited number of issuer officials, and (2) a time period over which the party committee or PAC would be required to examine when calculating the threshold percentage.

MSRB Response. As discussed above, the proposed Q&A guidance does not change the existing legal framework concerning the motivation that would result in a contribution being classified as an indirect contribution to an issuer official. An MFP or dealer could be found (after the fact) to have violated Rule G-37(d) if payments to a party or PAC are intended as end-runs around the direct contribution limitations. The MSRB

does not believe it is appropriate to attempt to delineate specific reasons that are permissible, and those that are not. What is important is that dealers institute adequate procedures to identify potential violations. If the dealer's procedures include making an inquiry about the reason for making the payment[16] the dealer must then exercise its judgment as to whether the facts and circumstances surrounding the payment indicate that the reason for making the contribution was to circumvent Rule G-37.

With regard to the "activity test" comments, the MSRB's existing Q&A guidance on this issue already states that dealers that make contributions to organizations such as political parties or PACs (as well as dealers that allow MFPs to make such payments) have a duty to make inquiries of such organizations in order to ascertain how the contributed funds will be used.[17] Following this guidance, dealers should be able to develop adequate written supervisory procedures reasonably designed to ensure that payments to political parties or PACs are not being used to circumvent the requirements of Rule G-37. The MSRB does not believe it is useful to provide "safe harbors" concerning parties or PACs such that a dealer or MFP could make payments to certain parties or PACs without investigating whether the payment is actually being made as a means to circumvent the requirements of Rule G-37. Such "safe harbors" create the potential for loopholes in Rule G-37's regulatory scheme as parties and PACs tailor their solicitations for contributions to MSRB suggested parameters.

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16 To the extent that dealers are concerned that the act of inquiring about persons' reasons for making payments to PACs and political partiers may chill political speech, the procedure could require persons to give negative assurances that the party or PAC payment is not being made as a means to circumvent the requirements of Rule G-37.

17 See Rule G-37 Questions and Answers No. III. 5, reprinted in MSRB Rule Book. See also Rule G-37 Questions and Answers Nos. III.3 and III.4, reprinted in MSRB Rule Book.

However, the MSRB has determined to revise the guidance and remove some of the specific due diligence suggestions to focus on reminding dealers that each dealer is required under Rule G-27, on supervision, to evaluate its own circumstances and develop written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37(d), on indirect violations. After evaluating its own circumstances, a dealer could determine that adequate supervisory procedures would include some of the commentators' suggested due diligence procedures.

National Party Committees and Federal Leadership PACs Should be Expressly Permitted.

Comments Received. BMA, SIA and UBS request that, while they believe contributions to national party committees and federal leadership PACs appear to be permitted under the due diligence standards established by the proposed Qs&As, the MSRB should expressly state that contributions made to a national party committee or federal leadership PAC are permitted under the proposed Qs&As as long as (1) the contribution was not solicited by an issuer official, and (2) the party committee or leadership PAC is not controlled by an issuer official.

MSRB Response. Essentially, the commentators are asking the MSRB to create a safe harbor for certain national party committees and federal leadership PACs. The creation of such a safe harbor would be a departure from the intended reach of Rule G-37(d). As noted above, the Court of Appeals in Blount expressly recognized that Rule G-37(d) was originally intended to prevent payments to both national and state parties used as a "means to circumvent" Rule G-37. Moreover, although BMA, SIA and UBS

essentially assert that when a contribution is not solicited by an issuer official and the party leadership PAC is not controlled by an issuer official the national party committees and federal leadership PACs can not be used as a means to circumvent Rule G-37, such a position is inconsistent with public perception.[18] Additionally, the Supreme Court's recent decision in McConnell v. Federal Election Commission,[19] emphasized the potential for payments to a political party to have undue influence on the actions of the elected officeholders belonging to the same party. McConnell upheld new federal statutory restrictions on soft money donations that were neither solicited by candidates nor used by the party to aid specific candidates. Given public perception and the Supreme Court's pronouncements, the MSRB believes it is reasonable to require dealers to be responsible for having adequate supervisory procedures that obligate the dealer to exercise its judgment concerning whether contributions to any party or PAC are being made as a means to circumvent the provisions of Rule G-37.

The Existence of a "Safe-Harbor" For Payments to "Housekeeping" Or "Conference" Accounts.

Comments Received. The BMA and UBS assert that the MSRB's statements in the Notice are a departure from prior statements because previously the MSRB recognized a "safe-harbor" that expressly permitted contributions to "conference accounts" of state and local party committees. ABASA also states that the MSRB has

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[18] See e.g., Spina, Naples favors one underwriter GOP backer gets 80% of county bond business, even at $500,000 higher cost, The Buffalo News, April 6, 2005 at p. A1 (suggesting that an MFP's contributions to a PAC run by House Majority Leader Tom Delay were transferred to the congressional campaign of a sitting issuer official that awarded 14 of 24 bond deals to firms that the MFP was associated with).

[19] McConnell v. Federal Election Commission, 540 U.S. 93, 124 S.Ct. 619 (Dec. 10, 2003).

with the draft Qs&As, in effect, outlawed contributions to housekeeping and similar accounts.

MSRB Response. The MSRB's statements in the Notice about the status of "housekeeping" or "conference" type accounts were made to correct a misconception about these types of accounts. Although the MSRB never recognized such accounts as a safe-harbor, the MSRB learned that some dealers might have believed that payments to a "housekeeping" type account could not result in an indirect violation of Rule G-37. The SEC's approval order of certain early amendments to Rule G-37 demonstrates that the MSRB never intended for dealers to treat payments to administrative accounts as a safe harbor.[20]

In 1995, the MSRB filed and the SEC approved amendments to Rule G-37's disclosure requirements to require dealers to record and report all payments to parties by dealers, PACs, MFPs and executive officers regardless of whether those payments constitute contributions. In the 1995 SEC Approval Order, the SEC reiterated that the party payment disclosure requirements are intended to help ensure that dealers do not circumvent the prohibition on business in the rule by indirect contributions to issuer officials through payments to political parties. The SEC explained that the need for the language amendment was motivated by attempts by dealers and/or political parties to assert that contributions to administrative type accounts did not fall within the rule's regulatory ambit. In the 1995 SEC Approval Order, the SEC states:

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[20] See Securities Exchange Act Release No. 35446 (SEC Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-8, on Recordkeeping) (March 6, 1995), 60 FR 13496 (March 13, 1995) ("1995 SEC Approval Order").

> Certain dealers and other industry participants have notified the MSRB that certain political parties currently are engaging in fundraising practices which, according to these political parties, do not invoke the application of rule G-37. For example, some of these entities currently are urging dealers to make payments to political parties earmarked for expenses other than political contributions (such as administrative expenses or voter registration drives). Since these payments would not constitute "contributions" under the rule, the recordkeeping and reporting provisions would not apply. The MSRB is concerned, based upon this information, that the same pay-to-play pressures that motivated the MSRB to adopt rule G-37 may be emerging in connection with the fundraising practices of certain political parties described above.[21]

In addition, in August 2003, when the MSRB published a notice on indirect rule violations of Rule G-37, the MSRB referenced the 1995 SEC Approval Order and specifically stated that, "The party payment disclosure requirements were intended to assist in severing any connection between payments to political parties (even if earmarked for expenses other than political contributions) and the awarding of municipal securities business."[22]

The Term Affiliated PAC should be Clarified.

The BMA states that, while the proposed Qs&As suggest that a broker-dealer establish an informational barrier between it and its affiliated PAC, the MSRB does not clarify what it means by the term "affiliated PAC." The BMA also states that the MSRB

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21 Id. at 13498.

22 MSRB Notice 2003-32 (August 6, 2003) at pp. 1-2 (emphasis added).

should clarify "affiliated PAC" to mean a PAC that is controlled by a wholly owned affiliate of the broker-dealer.

MSRB Response. The MSRB has accepted the suggestion that the term "affiliated PAC" should be defined in the guidance and has revised the guidance to provide that for the purposes of this guidance the term "affiliated PAC" means a PAC controlled by an affiliated entity of a dealer. An "affiliated entity" is an entity that controls, is controlled by or is under common control with the dealer. This use of the term "affiliated" is consistent with the use of the term in the MSRB's proposed amendments to Rule G-38(b)(ii), on consultants.[23]

Recommendations Concerning Information Barriers.

Comments Received. ABASA states that the MSRB's suggestion that dealers establish an information barrier prohibiting sharing information about prior negotiated municipal securities business as well as current and planned solicitations between the dealer, its MFPs and any affiliated PAC is unrealistic because much of the information is public.

MSRB Response. The MSRB has revised the language relating to the municipal securities business information barrier to suggest that dealers prohibit the dealer and its MFPs from directly providing or coordinating information about prior negotiated municipal securities business as well as current and planned solicitations to any affiliated PAC.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

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[23] See Securities Exchange Act Release No. 51561 (April 15, 2005), 70 FR 20782 (April 21, 2005) (File No. SR-MSRB-2005-04).

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

A. by order approve such proposed rule change, or

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

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2005-12 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-MSRB-2005-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2005-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland
Deputy Secretary

[24] 17 CFR 200.30-3(a)(12).