

INFORMATIONAL

MSRB Rule G-37 Exemptive Relief

NAC Issues Decision On MSRB Rule G-37 Exemptive Relief

SUGGESTED ROUTING

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- Fixed Income
- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
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KEY TOPICS

- MSRB Rule G-37 Exemptions
- Political Contributions

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is publishing a National Adjudicatory Council (NAC) decision in which the NAC denied an appeal from a firm requesting exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37(i). The purpose of this *Notice* is to provide members with additional guidance about the scope and the limitations of exemptive relief available under MSRB Rule G-37(i).

Attachment A is the NAC decision in redacted form.

Questions/Further Information

Questions regarding this *Notice* may be directed to Malcolm Northam, Director, Fixed Income Securities, Department of Member Regulation, NASD Regulation, at (202) 728-8085; or Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985.

Discussion**Background**

The NAC recently denied an appeal from a firm requesting exemptive relief under MSRB Rule G-37(i). The broker/dealer was interested in hiring an attorney to perform certain compliance and business functions on behalf of the broker/dealer, but her hiring would trigger the two-year ban on certain municipal securities business activities, because, prior to being approached by the broker/dealer regarding joining the firm, she made political contributions to several elected officials. At the time the attorney made the contributions, the attorney was not subject to any prohibition regarding the making of the political contributions, and she was not aware that she might become subject to MSRB Rule G-37 because, as stated above, she had not yet been approached by the broker/dealer. The NAC affirmed the NASD Regulation staff's denial of exemptive relief. The NAC decision, in redacted form, is included with this *Notice* as Attachment A.

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Attachment A

Firm A

Address

Re: Firm A MSRB Rule G-37 Exemption Request

Dear **C**:

This is in response to your letter dated **Date**, as supplemented by your letters dated **Date** and **Date**, in which you appealed the decision by NASD Regulation, Inc. ("NASD Regulation") staff dated **Date**, denying a request by **Firm A** for an exemption from the business prohibition requirement under MSRB Rule G-37. On **Date**, the National Adjudicatory Council ("NAC") affirmed the NASD Regulation staff's denial of **Firm A's** request for an exemption.

Factual Background

During 1998 and 1999, a lawyer in private practice in **City N, State M, Lawyer**, made political contributions to **City N** and **County O** elected officials (e.g., the mayor of **City N**, four members of **City N's** governing council, and the president of the **County O** governing board). At the time she made the contributions, **Lawyer** was not subject to MSRB Rule G-37, and she was unaware that she might become subject to MSRB Rule G-37 because she had not yet been approached by **Firm A** regarding joining the firm. If hired, **Lawyer** would be a municipal finance professional ("MFP"), and her hiring would trigger the business prohibition requirement of MSRB Rule G-37(b).

Lawyer was identified by **Firm A** as a highly skilled individual who is very experienced as a practicing securities and public finance lawyer. **Lawyer** currently is a partner at **Law Offices B**, where she has worked for many years. **Firm A** represented that it is expanding its business, particularly in **State Z**. The **State Z** business currently is concentrated in underwriting government obligations ("Gos"). "For over two years, **Firm A** has actively searched for a highly skilled individual who would assume management responsibility for **Firm A's** existing investment banking services provided to governments, school districts and nonprofit institutions The person's duties would include recruiting and managing new professionals . . . who will service **Firm A's** existing clients, and expanding **Firm A's** business in these areas."¹ **Lawyer**, if given the position, would "be responsible for reviewing and standardizing the documentation used in **Firm A's** financing transactions, for structuring transactions for compliance with state and federal law and for supervising the compliance by **Firm A's** municipal finance professionals with applicable regulatory requirements, including state and local ethics laws."² **Lawyer**, for example, would address all the compliance issues arising in the Go investment banking business, advice she currently provides as outside counsel.

Firm A began negotiations to hire **Lawyer** in 1999. **Lawyer** had not made any political contributions for some time before **Firm A** began employment discussions with her, and she had not made any political contributions since such discussions began.

Without exemptive relief, hiring **Lawyer** would bar **Firm A** from engaging in municipal securities activities until **Date**, with at least multiple **City N**-based major issuers (**City N**, and multiple commissions and boards) and until **Date** with at least two **County O** issuers (**County O**, and a **County O** board). **Firm A** indicated that it was most concerned about obtaining exemptive relief regarding **City N** and the other **City N**-based issuers because several current MFPs are involved in projects to underwrite bonds to finance improvements in several small tax increment financing ("TIF") districts. **Firm A** stated that its clients, the private real estate developers who identify a possible TIF-financed deal, and not **City N**, actually select the underwriter, although **City N** has required an additional underwriter to be added occasionally when approving TIF financing.

NAC Decision

In written guidance dated May 24, 1994, the MSRB addressed a similar set of facts and circumstances and concluded that political contributions made before one becomes an employee/MFP of a broker-dealer will routinely trigger the Rule G-37(b) ban on municipal securities business as of the time the contributor becomes an employee/MFP. The MSRB interprets the facts and circumstances as creating a nexus between the employee/MFP's political contributions and the firm's municipal securities business with any related issuer.³ While your letters emphasize that **Firm A** has established rigorous procedures for ensuring compliance with MSRB Rule G-37 and has complied with the Rule since its adoption, these factors are not relevant in those cases where the ban is triggered by the pre-employment conduct of a contributor. For these reasons, the NAC affirmed NASD Regulation staff's denial of **Firm A's** request for exemptive relief. In reaching its decision, the NAC adhered strictly to the interpretative position previously developed by the MSRB. However, the NAC also stated its belief that the MSRB's interpretative position, which was filed with the SEC, is inappropriately inflexible and should be re-examined.

The NAC granted the request for confidential treatment regarding the record generally, except that the decision of the NAC will be published in redacted form in the NASD's Notices to Members, and otherwise provided in redacted form as requested. Key identifying information that may identify the actual parties or the issuer will be redacted (e.g., the name of the MFP; the name of the member firm; the name of the recipient of the contribution; the name of the city, state or governmental entity that is the issuer; and other legal names that may allow a reader to identify the parties involved).

Endnotes

¹**Firm A** letter dated **Date**.

²*Id.*

³Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37, MSRB Interpretation to Rule G-37, Q & A No. 15, dated May 24, 1994, provides:

Q: Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional. Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years.