

NASD Notice to Members 98-51

Exemptive Relief Under MSRB Rule G-37(i)

Suggested Routing

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Executive Summary

On May 28, 1998, the National Adjudicatory Council (NAC) considered two requests for exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37(i). The NAC's decisions are published below in redacted form, pursuant to a publication policy that the NAC adopted, described below.

Questions regarding this *Notice* should be directed to Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8985.

Publication Policy

The NAC has decided to publish each final NAC decision regarding MSRB Rule G-37(i) in a redacted form in a *Notice*. Key identifying information will be redacted (*e.g.*, the name of the municipal finance professional (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 would allow a reader to identify the parties involved).

The publication policy will be subject to exceptions on a case-by-case basis. If the National Association of Securities Dealers, Inc. (NASD[®]) is apprised of particularly egregious conduct, including, for example, intentional conduct to evade the Rule by the contributor/MFP or the firm's management, the NASD may decide to identify fully some or all of the parties and other specifics.

The NASD believes that its obligation to further investor protection is fulfilled by the publication of such decisions, which will inform both the public and the broker/dealer community of the NASD's enforcement of MSRB Rule G-37. By publishing the decisions, the investing public and the broker/dealer community will

understand the rationale for such decisions. The policy will encourage firms to continue to maintain strict supervisory and screening procedures relating to political contributions by firm employees.

The first two decisions of the NAC regarding MSRB Rule G-37 and subject to this policy are set forth below. The NAC denied exemptive relief to Firm A, referenced in Letter 1, which was subject to a ban due to a \$25 contribution. However, based on the factors identified below, the NAC lifted the remaining term of the ban for Firm X, referenced in Letter 2. In Firm X's case, the ban was triggered by a \$100 contribution.

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Recent NAC Decisions Regarding MSRB Rule G-37(i) Exemptive Relief

Letter 1: Exemptive Relief Denied

Firm A
Address

Re: **Firm A** MSRB Rule G-37 Exemption Request

Dear **Mr. M**:

The National Adjudicatory Council ("NAC") of NASD Regulation, Inc. ("NASD Regulation") reviewed **Firm A's** appeal for exemptive relief on **Date**, and denied the request.

In reaching this determination, the NAC was particularly concerned that the timing of the contribution and other circumstances surrounding the contribution created the appearance of a link between the contribution and the potential award of municipal securities business. Specifically, the Municipal Finance Professional ("MFP") had personal knowledge of a proposed **Project**, was aware as a member of the **Project** Board that implementation of the proposed improvements included plans to issue a substantial amount of municipal bonds, based upon several public projections for the proposed project, and had signed **Firm A** documentation that made him eligible to receive a finder's fee for the award of such business. In addition, the contribution was made to a City Council member who was one of a very small number of City Council members who sat on the City Council's subcommittee exercising jurisdiction over the **Project** and who apparently was in a position to influence the award of business pertaining to a substantial municipal securities offering for which **Firm A** was a candidate.

In these circumstances, the NAC concluded that it would be inconsistent with the purposes of Rule G-37 to grant the requested exemption. Accordingly, the NAC denied the requested exemption. We note that the exemption request suggested that the contribution in question should not be deemed to have been made by an MFP to an "official of an issuer" as those terms are defined in Rule G-37. For purposes of this action, we assumed that the contribution would trigger the prohibitions of the rule. Any interpretive questions concerning the application of Rule G-37, including those identified in the request, should be addressed to the Municipal Securities Rulemaking Board.

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).

Letter 2: Exemptive Relief Conditionally Granted

Firm X
Address

Re: Firm X MSRB Rule G-37 Exemption Request

Dear Mr. N:

The National Adjudicatory Council ("NAC") of NASD Regulation, Inc. ("NASD Regulation") reviewed **Firm X's** appeal for exemptive relief on **Date**, and granted it.

The contribution that was made by the **Firm X** Municipal Finance Professional ("MFP") on **Date**, appears to have been made inadvertently, was small, and was immediately returned. Moreover, there appears to have been no *quid pro quo* sought by the making of the contribution by either the MFP or **Firm X**. **Firm X** acted both within the letter and intent of the rule when confronted with the knowledge of the inadvertent contribution. When the contribution was made, **Firm X** had very detailed policies in place regarding MSRB Rule G-37 and related rules. Upon discovering the contribution had been made, **Firm X** voluntarily avoided initiation of any prohibited activity with the municipality in question and took additional proactive steps to avoid any recurrence of any conduct that could trigger the MSRB Rule G-37 ban on business.

Based upon the facts and circumstances set forth above, the NAC granted conditional exemptive relief to **Firm X** by removing the ban on the municipal securities business activities described in MSRB Rule G-37(b) effective as of **NAC Meeting Date**. The NAC concluded that exemptive relief from the two-year ban on municipal securities business was consistent with the public interest, the protection of investors, and the purposes of the rule. In granting the relief, the NAC did not conclude that a one-year and one-month ban was appropriate in the circumstances. Rather, the NAC concluded that having the ban continue for any additional period beyond that period already served by **Firm X** would be disproportionate to the conduct of **Firm X** and its MFP.

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).