

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C05030036
v.	:	
	:	Hearing Officer – AWH
SISUNG SECURITIES CORPORATION	:	
(CRD# 25752),	:	
	:	Hearing Panel Decision
LAWRENCE J. SISUNG, JR.	:	
(CRD# 1285539),	:	November 19, 2004
	:	
Respondents.	:	

Municipal Securities Dealer found liable for failure to report political contributions, in violation of MSRB Rule G-37(e), and fined \$10,000. Municipal Securities Dealer and Registered Municipal Securities Principal found liable for failure to maintain records of political contributions, in violation of MSRB Rules G-8 and G-9, and fined \$10,000, jointly and severally, and assessed costs. Municipal Securities Dealer found not liable for participation in municipal securities business, in violation of MSRB Rule G-37. Municipal Securities Dealer and Registered Municipal Securities Principal found not liable for (1) facilitating violations of MSRB Rule G-37(b); and (2) soliciting political contributions, in violation of MSRB Rule G-37(c).

Appearances:

Mark P. Dauer, Esq., and Ralph Drury Martin, Esq.,
for the Department of Enforcement

Thomas K. Potter, III, Esq., and Stacie M. Hollis, Esq.,
for Sisung Securities Corporation and Lawrence J. Sisung, Jr.

DECISION

Introduction

On July 11, 2003, the Department of Enforcement (“Enforcement”) filed the Complaint in this matter, alleging that Sisung Securities Corporation (“SSC”) and Lawrence J. Sisung, Jr. (“Sisung”) (collectively, “Respondents”) violated Municipal Securities Rulemaking Board (“MSRB”) Rules G-37, G-8, and G-9 by (1) making, soliciting, and coordinating political contributions to members of the Louisiana State Bond Commission when SSC was engaging or seeking to engage in municipal securities business with political subdivisions of the State of Louisiana, and (2) within two years of making certain political contributions, participating as an underwriter or financial advisor on negotiated municipal issues of political subdivisions of the State of Louisiana which were authorized by the Louisiana State Bond Commission; and (3) failing to report certain political contributions, and failing to maintain records of those contributions. SSC and Sisung filed an Answer to the Complaint, denying the allegations and requesting a hearing. A hearing was held in New Orleans, Louisiana, on April 5 and 6, 2004, before a hearing panel composed of the Hearing Officer and a current and a former member of the District No. 5 Committee. The parties filed post-hearing briefs, and Enforcement filed a reply brief.¹

The gravamen of this case of first impression is the reach of the MSRB’s “pay to play” prohibition, contained in Rule G-37, and whether it applies to contributions made

¹ The Respondents moved for leave to exceed the page limit on briefs provided in Rule 9266(d). Enforcement does not oppose the motion. For good cause shown, the Hearing Panel grants the motion. On June 28, 2004, Respondents opposed Enforcement’s Motion for Leave to File a Reply Brief. However, finding no prejudice to the Respondents, the Hearing Panel grants Enforcement’s Motion and will consider the Reply Brief.

to legislators and others who sit *ex officio* on the Louisiana State Bond Commission (“LBC”) in its role as a state regulatory oversight body for political subdivision debt which it approves only for legality and feasibility. SSC affiliates made campaign contributions to legislative candidates who served on the LBC which, within two years following those contributions, approved negotiated political subdivision debt issues on which SSC was underwriter or financial advisor.

Findings of Fact²

I. The Respondents and Affiliates

A. Respondent SSC

SSC has been registered with the SEC and NASD as a broker-dealer since 1989, and is a municipal securities dealer under Section 3(a)(30) of the Securities Exchange Act of 1934. Stip. 1. SSC is a relatively small firm, employing ten registered representatives, and retaining \$700,000 in net capital. Stip. 4; Tr. 195, 203. It has no significant disciplinary history. Tr. 189; CX 28.

B. Respondent Sisung

Lawrence J. Sisung, Jr. entered the securities industry in 1984, taking early retirement after twenty-one years as an educator and administrator in the Jefferson Parish School District in Louisiana. Initially, he worked as a Direct Participation Programs Representative for former NASD member Montelepre Securities. Stip. 2. Later, he formed SSC and an investment advisory firm, Sisung Investment Management Services, Inc. (“SIMS”). Tr. 100-01. Sisung has been associated with SSC since its inception. He was, and remains, registered through SSC as, *inter alia*, a General Securities

² References to Enforcement’s exhibits are designated as CX_; Respondents’ exhibits, as RX_; Stipulations, as Stip._; and the transcript of the hearing, as Tr._.

Representative and a Municipal Securities Principal; and he is a municipal finance professional of the firm under MSRB Rule G-37(g)(iv). Stips. 2, 3. Until the filing of the Complaint in this matter, Sisung was a member of the NASD District No. 5 Committee. Tr. 104. Sisung has no disciplinary history. Tr. 102-3; 189; CX-27.

C. SSC's Affiliates

1. UPC

Sisung originally founded UPC as United Properties Corp., a Louisiana corporation engaged in various real estate projects. Tr. 101. Sisung was the president and sole shareholder of the corporation until March 21, 2000. Stip. 6. On that date, United Properties merged into United Professionals Company, LLC.³ Stip. 7; C-40. Over the years, United Properties had expanded the scope of its activities beyond real estate. Sisung believed that the new title and business form would better represent the variety of projects and investments the company pursued. Tr. 120, 179. In addition, the organizational change reflected the increased role of Sisung's two sons in the business operations. *Id.* After the merger, Sisung retained a 52% interest controlling interest in the resulting company, as well as managerial power. Stip. 8.

UPC became involved in a wide variety of large-scale real estate and business development projects. Consequently, it developed a number of legislative and regulatory interests. Tr. 110, 176-78. To further its venture capital business, UPC worked closely with the state legislature to rework and restructure "capital company" legislation. Tr. 176-78. Capital companies, or CAPCOs, are statutorily created companies that provide venture capital for Louisiana businesses. *Id.* UPC is also engaged in redeveloping the

³ Both before and after the merger, the company used the acronym "UPC." Tr. 121-22, 180. Hereafter, UPC will be used interchangeably to refer to United Properties or United Professionals.

World Trade Center in New Orleans, converting the building into a hotel. *Id.* This large, controversial project involves a number of tax districting and regulatory considerations that have resulted in continual interaction with the legislature and various agencies of state government. In addition, UPC has been engaged in the privatization and development of Lakefront Airport. *Id.*; Tr. 175. As a result of that project, UPC has been involved in related legislative and regulatory issues such as State funding and post-9/11 airport security legislation. *Id.* UPC has its own business and legislative interests, but is not a municipal finance professional under MSRB Rule G-37(g)(iv), a broker-dealer, a municipal securities dealer, or a political action committee (“PAC”).

2. SIMS

Sisung founded Sisung Investment Management Services, Inc., in the late 1980’s. Tr. 101. In March 2000, the corporation merged into Sisung Investment Management Services, LLC.⁴ Stip. 10. Both before and after the merger, Sisung was the sole owner and manager of SIMS. Stips. 9-10. The company is an asset management firm, registered pursuant to the Investment Advisers Act of 1940. *Id.* It employs both fixed-income and equity portfolio managers, and has nearly one billion dollars under management. Tr. 101. SIMS has its own independent business interests, and is not a municipal finance professional under MSRB Rule G-37(g)(iv), a broker-dealer, a municipal securities dealer, or a PAC. Stip. 24, 25.

II. The Louisiana State Bond Commission

A. Structure and Function of the LBC

The LBC was created by the Louisiana Constitution of 1974. Stip. 11. Article VII, Section 8(b) of the Constitution states that “no bonds or other obligations shall be

⁴ Hereafter, both entities will be collectively referred to as “SIMS,” unless otherwise noted.

issued or sold by the state, directly or through any state board, agency or commission, or by any political subdivision of the state, unless prior written approval of the bond commission is obtained.” *Id.*

The Commission is responsible for issuing and selling general obligation bonds of the state of Louisiana, and is charged with the sale of all other state bonds, excluding those of political subdivisions. Stip. 14; La. R.S. 39:1402, 1403 (2004). In the context of state bonds, the LBC has an active role; it is the “issuer” as to state general obligation debt and selects the underwriter for that debt. Stip. 14; Tr. 57. Depending upon the nature of the state bond, the LBC may dictate the terms of the offering. Tr. 50-51.

Article VI, Section 33 of the Constitution authorizes political subdivisions to issue their own general obligation bonds, subject to approval by the LBC. Stip. 13. In such cases, the political subdivision is the issuer, rather than the LBC. Tr. 57. The role of the LBC is far more circumscribed in this context. Tr. 60-61. It serves merely an oversight function. *Id.* The subdivision employs its own financial experts and advisers to set the terms, and the subdivision chooses the underwriter for the offering. Tr. 51, 61. Once negotiations are finished and the underwriter is chosen, the subdivision provides the LBC with a completed application, setting out the terms and details of the proposed offering. Stip. 15; Tr. 51. The LBC’s analysts review the applications and provide the members with a recommendation, as well as a summary of pertinent information. Tr. 37-38. The name of the underwriter may or may not be included on the summary analysis, depending upon the type of bond under consideration. Tr. 69-70. When it meets, the LBC reviews the issue for “compliance with constitutional and statutory requirements and feasibility.” La. Admin. Code, Title 71, Part III, Sec. 101(D) (2002); Stip. 15. Its primary

consideration is the subdivision's financial ability to sustain the obligation.⁵ Tr. 58, 70-71. After its review, the LBC has only three options: it can approve the issue, it can disapprove it, or it can defer judgment for future discussion and consideration. Tr. 61.

The majority of subdivision bond issues are approved by the LBC "en globo"; that is, a varied group of subdivision bond applications would be treated as a single unit, and approved en masse upon the recommendation of the LBC's analysts. Tr. 39, 62-63, 264. A Commission member could, however, remove an individual application from the larger collective, and consider it individually. Tr. 39, 62.

B. Membership of the LBC

LBC members are not directly elected to the LBC. Tr. 56. Rather, they are elected to other state offices that qualify them for membership on the LBC. The sole exception is the Commissioner of Administration, who is appointed by the governor. Stip. 12. Other than the Commissioner of Administration, members of the LBC fall into four categories:

- 1) The governor, lieutenant governor, state treasurer, secretary of state, and attorney general, who are elected directly to offices that confer LBC membership;
- 2) The President of the Senate and Speaker of the House of Representatives, who are first elected to the legislature and then elected to qualifying posts by their respective bodies;

⁵ In its Post-Hearing Brief (p. 5), Enforcement would have the Hearing Panel find that, with respect to subdivision debt, "Bond Commission members have been known to question fees paid to professionals, to express preferences for in-state underwriters, and to openly advocate the substitution of underwriters," citing the testimony of Respondents' expert witness, Dr. W. Bartley Hildreth (Tr. 294-95) who reviewed minutes of LBC meetings. Dr. Hildreth answered in the affirmative when asked the following two questions: ". . .you found that at times members' attention was drawn on the official record to fees paid to underwriters and others who were engaged to work on bond transactions; right?" "You found that on the record from time to time members of the Commission expressed a preference for in-state underwriting firms; right?" However, he testified that when a member of the LBC advocated the substitution of an underwriter, a former member of the LBC countered that suggestion, and the LBC was shown that it did not have the power to substitute the underwriter. Tr. 294-95. *See also* Tr. 267-68; *accord*, Tr. 77; RX 54, at 0020. The questions to Dr. Hildreth do not establish, and there is no other evidence, that the LBC has substituted, or is empowered to substitute, an underwriter on a subdivision bond issue.

- 3) The chairmen of the Senate Finance Committee, State Revenue and Fiscal Affairs Committee, and House Ways and Means Committee, who are first elected to the legislature and are then appointed to their qualifying posts by the President of the Senate and the Speaker of the House;
- 4) Two members of the legislature, one appointed by the President of the Senate and one, by the Speaker of the House.

Stip. 12. Any member of the LBC may give a proxy to another person, allowing the other person to sit in place of the member and act in his or her stead. Tr. 49-50. A proxy would usually be filed on the morning of an LBC meeting, and was often given to allow a local representative to vote in favor of an issue from his own district. Tr. 49-50, 64.

III. Political Contributions by SIMS, UPC, and Sisung within Two Years of SSC's Serving as Underwriter or Financial Advisor on Subdivision Debt Issues

Between February 28, 1998, and September 17, 2001, SIMS and UPC, by checks signed or authorized by Sisung, made 14 political contributions, totaling \$16,900, to the campaigns of:

1. Ken Duncan – 7/27/98 – incumbent State Treasurer and LBC Chairman
2. Jon Johnson – 6/8/99 – incumbent State Senator and LBC member
11/17/99 – incumbent State Senator and LBC member
3. John Hainkel – 10/9/99 – incumbent State Senator and LBC member
1/23/00 – incumbent President of Senate and LBC member
4/19/00 – incumbent President of Senate and LBC member
4/11/01 – incumbent State Senator and LBC member
4. John Kennedy – 4/11/00 – incumbent State Treasurer and LBC Chairman
9/17/01 – incumbent State Treasurer and LBC Chairman
5. Bryant Hammett – 5/11/00 – incumbent State Representative and LBC member
4/23/01 – incumbent State Representative and LBC member

6. Paulette Irons – 6/6/01 – incumbent State Senator and LBC member
6/28/01 – incumbent State Senator and LBC member

7. Fox McKeithen – 2/27/98 – incumbent Secretary of State and LBC member

Stips. 17, 18.

UPC and SIMS, by checks drawn or authorized by Sisung, made 25 other political contributions, as detailed on Exhibit “B” to the Complaint. Stip. 19. The recipients reported the contributions as made by UPC or SIMS.

Sisung would customarily transmit campaign contributions by personally attending campaign functions where he would wear a name tag and hand deliver a check to the candidate’s representative or, sometimes, to the candidate directly. He delivered the checks in envelopes, without cover letters or other documents. Tr. 117-18.

IV. Bond Issues on Which SSC Served as Underwriter or Financial Advisor within Two Years of Making Political Contributions

From March 1, 1998, through December 1, 2002, SSC served as underwriter or financial advisor on 21 negotiated municipal bond issues by Louisiana political subdivisions. Stip. 22.⁶ None of these bond issues was “issued” or “sold” by the LBC as provided for under La. R. S. 39:1402 or 1403. Stip. 23; Tr. 214, 245-46. During that time period, neither SSC, UPC, SIMS, nor Sisung conducted any Rule G-37(g)(viii) “municipal securities business” with the LBC. Stip. 26; Tr. 114, 214. In fact, SSC chose to forgo municipal securities business with the LBC to enable it to further the legislative agendas of UPC and SIMS. Tr. 110-11, 143-44.

All 21 bond issues were approved by the LBC, with no dissenting votes among the 14 members of the LBC. Tr. 172-73 (stipulation). Approximately half of the LBC

⁶ The issues are listed in Exhibit A attached to the Complaint.

staff analyses on these issues did not mention the underwriter's identity. More than half of the approving resolutions were introduced or seconded by LBC members who were not recipients of contributions from SSC, UPC, SIMS, or Sisung. Tr. 92. LBC meeting transcripts reflect instances where contribution recipients were critical of political subdivision debt issuances involving SSC. Tr. 94.

V. Contributions Not Reported by SSC

UPC and SIMS made 39 political contributions between February 27, 1998, and October 22, 2001, totaling \$44,725. Stip. 19. Fourteen of those contributions, totaling \$16,900, went to the seven members of the LBC as noted above. Stip. 17, 18. The remaining contributions went to Parrish Councilmen, mayors, aldermen, school board members, and a sheriff. Complaint, Ex. B. All of the checks for those contributions were either signed or authorized by Sisung on behalf of UPC and SIMS. *Id.*, Stip 19. Sisung, however, did not make any contributions in his personal capacity. Tr. 80-81; CX-23. The recipients reported the contributions as made by UPC or SIMS. *Id.* SSC did not file Forms G-37 or G-38 for any of the 39 contributions made during the relevant period. Stip. 20; Tr. 115.

VI. Reliance on Advice of Counsel

A. Application of Rule G-37 to the LBC

Fred L. Chevalier ("Chevalier") is a partner and municipal bond attorney with the law firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre ("Jones, Walker"). Tr. 211. He has been a practicing municipal bond attorney since 1973. *Id.* He began his legal career with the public-finance section of the Louisiana Department of Justice, where he represented the Louisiana Treasury Department and the LBC. Tr. 211-12. Chevalier

then served as Assistant State Treasurer before entering private practice. Tr. 212. He is thoroughly familiar with the practices of the LBC, having drafted many of its policies and procedures during his tenure in state government, and has attended virtually all of the LBC's monthly meetings over the past thirty-one years. Tr. 212-13.

SSC retained Chevalier sometime in the mid-90's. Tr. 109, 218. He represented the firm on a variety of transactions, frequently providing legal advice and services in what both he and Sisung describe as an ongoing attorney-client relationship. Tr. 112, 221. Sometime between late 1996 and 1997, Sisung told Chevalier that SSC had stopped doing business with the LBC, and requested advice from Chevalier in interpreting the application of MSRB Rule G-37 to the LBC in relationship to its approval of political subdivision debt issues. Tr. 110, 183-84, 222. Sisung wanted to be certain that his political contributions, to legislators who may become members of the LBC and who supported the legislative goals of UPC, would not trigger liability under the MSRB "pay-to-play" rule. Tr. 111, 183-84, 221-22. Chevalier assured him that his contributions would not trigger liability as long as he avoided bond offerings where the LBC was the issuer. Tr. 111-12, 184, 221-22. In support of his assurances, Chevalier provided Sisung with a redacted opinion letter on the same subject that he and an associate had recently prepared for another client. *Id.*; CX-39.

In June of 1996, Chevalier and another partner at Jones, Walker had prepared the opinion letter for an investment-banking client engaged in municipal securities business with the state of Louisiana. Tr. 219-20. The client wanted to hire a broker who had recently given a campaign contribution to the State Treasurer. The client asked whether hiring this individual would trigger Rule G-37 and prevent it from underwriting bonds

issued by the LBC and other agencies. Tr. 219; CX-39, pp. 1-2. The opinion letter, dated June 27, 1996, concluded that the contribution to the State Treasurer would prevent the client from dealing in securities issued or sold by the LBC, but would not affect dealings with political subdivisions. The letter reasoned that because the State Treasurer is an *ex officio* member of the Commission, in the context of bonds issued or sold by the LBC, he is an “official of the issuer” under MSRB Rule G-37. CX-39, p. 3. In the context of debt offerings by political subdivisions, however, it states, “The fact that the State Bond Commission is required by statute to approve the issuance of bonds or other evidences of indebtedness by parishes, municipalities and all other political subdivisions of the State...does not constitute or make [the Treasurer] an official of those issuers” under G-37. CX-39, p. 4. Chevalier informed Sisung that he could rely on the this opinion letter, which meant that SSC could properly engage in municipal securities business with political subdivisions of the State of Louisiana without triggering the MSRB rule as a result of UPC’s contributions to legislators who might serve on the LBC. Accordingly, from that time forward, as it did before receipt of the letter, SSC refrained from doing any business with the LBC on debt for which the LBC was the issuer. Tr. 112-14.

It is unclear when this letter was provided to Sisung, though he is certain it was some months before the underwriting transaction of March 1, 1998, which was the first of those at issue in this proceeding. Tr. 115-16. Chevalier believes it was only a short time after the June 27, 1996, letter was originally written. Tr. 222. The letter was not updated or revised to incorporate the November 6, 1996, revision to the language of G-37.⁷ Tr. 234-37.

⁷ The significance of that revision to Rule G-37 is discussed below.

B. Reporting Requirements

Robert Lane Sisung (“Lane Sisung”) is Sisung’s son and SSC’s in-house counsel. Tr. 175. He is a CPA and an attorney, with an LLM in taxation. Tr. 174. After SSC received Chevalier’s advice and the supporting opinion letter, Sisung asked Lane Sisung to review any applicable reporting requirements that might apply to contributions by UPC. Tr. 115, 185. Lane Sisung analyzed the reporting requirements under Rule G-37, and, without seeking guidance from the MSRB, determined that the contributions did not need to be reported by SSC. Tr. 186. He was of the opinion that the rule was very specific as to which entities’ contributions had to be reported, and that UPC’s contributions were not within the ambit of the Rule’s requirements. *Id.* Lane Sisung presented his conclusions and analysis to Sisung, and, accordingly, SSC did not report the contributions of UPC or SIMS. *Id.*; CX-24.

Discussion

I. MSRB Rule G-37 And Its Prohibition of “Pay-to-Play”

MSRB Rule G-37, approved on April 7, 1994, prevents municipal securities dealers from using political contributions to state and local officials to obtain municipal bond business, particularly lucrative underwriting contracts. This practice, known as “pay-to-play,” adversely affects municipal securities markets “by increasing costs borne

by issuers, dealers and ultimately investors, by creating artificial barriers to competition, and by undermining underwriter and market integrity.”⁸ The prohibition on “pay-to-play” was designed as a strict prophylactic measure, seeking “to insulate the municipal securities industry from the potentially corrupting influence of political contributions that are made in close proximity to the awarding of municipal securities business.”⁹

Rule G-37(a)

Rule G-37(a) summarizes the Rule, stating that it seeks “to perfect a free and open market and to protect investors and the public interest by:

- (i) prohibiting brokers, dealers and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers; and
- (ii) requiring brokers, dealers and municipals securities dealers to disclose certain political contributions...”

Rule G-37(b)

Rule G-37(b) prohibits a regulated party from engaging in municipal securities business with an issuer for two years after a contribution to “an official of such issuer” is made by (i) the broker, dealer or municipal securities dealer, (ii) any municipal finance professional associated with such an entity, or (iii) any PAC controlled by the dealer or municipal finance professional. An “official of such issuer” is defined by Rule G-

⁸ *Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business*, Exchange Act Release No. 34-33868, 1994 SEC LEXIS 1023 at *2 (April 7, 1994) (hereinafter “G-37 Approving Release”). Prior to the Rule, this practice was so widespread that such contributions were considered a standard cost of business in the industry. See Jon B. Jordan, *The Regulation of “Pay-to-Play” and the Influence of Political Contributions in the Municipal Securities Industry*, 1999 Colum. Bus. L. Rev. 489, 493 (1999); Stephen J. Hedges, et. al., *The Politics of Money: How Underwriters of Municipal Bonds Win Their Business*, U.S. News & World Report, Sept. 20, 1993, at 67.

⁹ *In re Morgan Stanley & Co.*, Exchange Act Release No. 39459, 1997 SEC LEXIS 2598 at *5 (Dec. 17, 1997).

37(g)(vi) to include two categories of persons. The definition includes “any person who was, at the time of the contribution, an incumbent, candidate or successful candidate:

- (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or
- (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer...”

Rule G-37(c)

Rule G-37(c) prohibits a municipal securities dealer, municipal finance professional, or controlled PAC from soliciting contributions on behalf of an issuer official with whom it seeks to engage in municipal securities business. This provision was intended to “prevent dealers from engaging in municipal securities business with issuers if they engage in any kind of fund-raising activities for officials of the issuers that may influence the underwriter selection process.”¹⁰

Rule G-37(d)

Rule G-37(d) prohibits a regulated party from using indirect means to circumvent the prohibitions of subsection (b) or (c). Under this provision, a regulated party could not direct a third party to make a contribution on its behalf, or engage the third party to solicit contributions in its stead, in order to avoid triggering Rule G-37’s prohibition of business. This provision is “intended to prevent dealers from funneling funds or payments through other persons or entities to circumvent the proposal's requirements.”¹¹ To show that a contribution by a third party was directed by the municipal securities dealer, municipal

¹⁰ *G-37 Approving Release*, 1994 SEC LEXIS at *20

¹¹ *Id.* at *19.

finance professional or controlled PAC, Enforcement must prove that the regulated entity funneled the contribution with the specific intent to circumvent the rule.¹²

Rules G-37(e) and G-8(a)(xvi)

Rules G-37(e) and G-8(a)(xvi) comprise the recordkeeping component of the “pay-to-play” rule. These provisions are intended “to facilitate enforcement of Rule G-37’s ‘pay to play’ restrictions and, independently, to function as a public disclosure mechanism to enhance the integrity of and public confidence in municipal securities underwritings.”¹³ MSRB Rule G-8(a)(xvi) requires a municipal securities dealer to maintain records of political contributions made to issuer officials and political parties, directly or indirectly, by the firm itself, its municipal finance professionals, executive officers, or any dealer-controlled PAC. Rule G-37(e)(i) requires that the dealer periodically submit reports to the MSRB on Form G-37/G-38, based upon the records of contributions. These reports must include all contributions “that are required to be recorded pursuant to G-8(a)(xvi).” The Rule further states:

“such reports shall include information concerning the amount of contributions...made by:

- (A) the broker, dealer or municipal securities dealer;
- (B) all municipal finance professionals;
- (C) all non-MFP executive officers; and
- (D) all political action committees controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional.”

¹² *Id.*; *See Blount*, 61 F.3d 938, 948 (D.C. Cir. 1995) (“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)”); *Podesta*, 1998 NASD Discip. LEXIS 27 at *23 (NAC Mar. 23, 1998) (In speaking of an action under section (d) of G-37, MSRB interpretation states that an indirect contribution involves “actions taken by the dealer or a municipal finance professional for the specific purpose of circumventing the rule.”).

¹³ *G-37 Approving Release*, 1994 SEC LEXIS at *21.

A contribution by an unregulated third party need not be either recorded or reported by the municipal securities dealer unless “the contributions were directed by persons or entities subject to [Rule G-37].”¹⁴

II. Summary of Enforcement’s Theory of the Case

Enforcement argues that the contributions by UPC and SIMS should be attributable to Sisung, in his capacity as a municipal finance professional.¹⁵ Because in each instance Sisung either signed or authorized the check, Enforcement asserts that the contributions should be treated as having been made by him directly, thereby triggering the prohibition of SSC from engaging in municipal securities business, in violation of Rule G-37(b).

The Department also alleges that the contributions should be attributed to Sisung because he held “controlling interests” and “financial stakes” in UPC and SIMS.¹⁶ Thus, the contributions would trigger the two-year ban under Rule G-37(b). Alternatively, Enforcement alleges that Sisung, by directing the contributions through his affiliated companies, contributed indirectly to issuer officials in an attempt to avoid the prohibitions against his giving directly to those officials without triggering the disqualification of SSC from doing municipal securities business. Such indirect contributions would violate Rule G-37(d).¹⁷

Enforcement further argues that Sisung triggered the two-year ban on securities business under Rule G-37(c), “by soliciting the controlled entities” to make 14

¹⁴ *Id.* at 22 n. 48.

¹⁵ DOE Post-Hearing Brief, pp. 12-15; DOE Pre-Hearing Brief, pp. 6-8.

¹⁶ DOE Pre-Hearing Brief, p. 6.

¹⁷ DOE Post-Hearing Brief at pp. 13-15.

contributions to LBC members while SSC was engaging, or seeking to engage, in municipal securities business with Louisiana political subdivisions.

Enforcement contends that the contributions to the members of the LBC were covered by Rule G-37 because the members are “officials of an issuer” with respect to debt offerings by Louisiana political subdivisions for two reasons. First, Enforcement asserts that under Rule G-37(g)(vi)(A), LBC members are elected officials who are “directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business.” Second, citing the definition contained in Rule G-37(g)(vi)(B), Enforcement asserts that LBC members, by virtue of their proxy power, have “authority to appoint,” a “person who is directly or indirectly responsible for, or can influence the outcome of the hiring of a broker, dealer or municipal securities dealer for municipal securities business...”¹⁸ Enforcement posits that the ability to approve or disapprove the local issuer’s debt offering, even after the terms are set and the underwriter is selected, constitutes influence over the outcome of the hiring of an underwriter.¹⁹ It concludes, therefore, that by engaging in municipal securities business with the political subdivisions within the two-year period following the contributions, Sisung and SSC violated Rule G-37.

Finally, Enforcement concludes that Sisung and SSC violated Rules G-17, G-8, and G-9 by failing to report 39 contributions to issuer officials, and failing to prepare and maintain accurate reporting forms in the records of SSC.²⁰

¹⁸ *Id.* at 15-16, 20.

¹⁹ *Id.* at 18-20.

²⁰ *Id.* at 24.

III. The Contributions by UPC and SIMS Are Attributable to Sisung

Sisung's signature on the checks

In a February 1996 Interpretive Release approved by the SEC, the MSRB attempted to clarify “the applicability of rule G-37 when a person makes a contribution to an official issuer on behalf of others.”²¹ The Board stated that this situation includes, but is not limited to, the following examples:

- “1. A municipal finance professional signs a check drawn on a joint account and sends it as a contribution to an issuer official, along with a writing which states that the contribution is being made, in whole or in part, on behalf of the other holder of the joint account (who is not a municipal finance professional).
2. Both holders of a joint account, one of whom is a municipal finance professional, sign a check and send it as a contribution to an issuer official.”²²

The Board believed that “in these and similar situations,” the association of a municipal finance professional’s name with a contribution creates the appearance that the contribution is being given by that person.²³ In such cases, it is appropriate to attribute the contribution to the municipal finance professional directly.

Here, it is undisputed that Sisung either signed or authorized the signing of all of the checks issued for the contributions made by UPC and SIMS. Even though the checks drew upon corporate funds, Sisung’s signature gives the appearance that he was giving the contribution, as surely as if his name were on the check as a joint account holder.

²¹ *Notice of Filing and Order Granting Approval of Proposed Rule Change by the MSRB Relating to Interpretation of Rule G-37*, Exchange Act Release No. 34-36857, 1996 SEC LEXIS 388 at *5 (Feb. 16, 1996) (hereinafter “1996 G-37 Interpretive Release”).

²² *Id.* at 5-6.

²³ *Id.*

Given that the MSRB is concerned with the effect of a signature upon the recipient, rather than the intent of the signer, it is impossible to separate Sisung as corporate officer from his status as a municipal finance professional. Although in this case, the recipients recorded the contributions as having been made by the respective companies, Rule G-37 is designed as a “broad prophylactic measure.”²⁴ The fact that Sisung may be widely known in capacities outside of his role as a municipal finance professional does not vitiate the very real concerns embodied in the MSRB’s general policy of attributing a contribution to a municipal finance professional where his name is associated with that contribution. The checks Sisung signed are, therefore, attributable to him.

Sisung’s delivery of the checks

The remaining checks, authorized and hand-delivered by Sisung, are also attributable to him. If the signature of a municipal finance professional creates the perception that he or she is making the contribution, then it follows that personally delivering a check to the recipient raises identical concerns. By hand-delivering a check, a municipal finance professional creates the impression that he or she is associated with the contribution. Even here, where another corporate officer or Sisung family member may have signed the check drawing upon a company account, by delivering the funds in person, Sisung became inextricably linked to the contribution. Because he personally delivered the contributions to the recipients, they must be attributed to Sisung as a municipal finance professional. Therefore, the contributions triggered Rule G-37(b)’s prohibition on municipal securities business with the issuer recipient; here, the LBC.

²⁴ *Fifth Third Securities, Inc.*, Exchange Act Release No. 46087, 2002 SEC LEXIS 1573 at 8 n. 4 (Jun. 18, 2002).

Sisung's Control of Affiliated Entities

Enforcement asserts that “[b]ecause G-37 would be a dead letter otherwise, the SEC has determined that contributions made by corporate entities under the control of a [municipal finance professional (“MFP”)] constitute contributions by the MFP for the purposes of Rule G-37.”²⁵ Enforcement contends that the contributions by third parties should be treated as having been made by Sisung himself, triggering Rule G-37(b) directly. Generally, contributions by entities other than municipal securities dealers, municipal securities professionals, or their controlled PACs, are indirect contributions under Rule G-37(d), a provision that, as noted above, requires Enforcement to prove a specific intent to direct contributions through third party conduits in order to circumvent the Rule.²⁶ The record in this case does not demonstrate that Sisung intended to circumvent the “pay to play” provisions. Rather, the Hearing Panel finds that, in consciously declining to do business with the LBC on state-issued bonds, he made a good faith attempt at complying with the complex requirements of Rule G-37.

Enforcement’s argument conflicts with the express language of the Rule. Rule G-37(b) expressly applies only to municipal securities dealers, municipal securities professionals, and controlled PACs. The definitions of these categories, as articulated in the rule itself and in MSRB interpretative releases, do not include affiliates or third parties, whether controlled or independent.²⁷

²⁵ DOE Pre-Hearing Brief, p. 6. This is an alternative theory argued by Enforcement that the Hearing Panel finds unnecessary to rely on, and, in any event, rejects.

²⁶ See *supra* note 12.

²⁷ See Rule G-37(g)(iv); *Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37*, MSRB Interpretations of Rule G-37, Q & A No. 5 (May 24, 1994) (Q: Does the definition of municipal finance professional include anyone other than an associated person of a dealer, for example, consultants, lawyers or spouses of municipal finance professionals? A: No.).

Further, the release approving Rule G-37 expressly states that contributions by affiliates trigger the two-year ban only if they are directed with the requisite intent to circumvent the Rule.²⁸ No distinction is made between a controlled affiliate and one that is not entirely controlled. Also, the release contains a section, entitled “Municipal Securities Dealer Affiliates,” addressing the omission of affiliated persons and companies from the scope of persons or entities that could trigger the two-year disqualification of subsection (b).²⁹ Many commentators believed that this omission would allow certain parties to circumvent the rules more easily by using other entities. However, the SEC responded that it did not believe the exclusion of such affiliates from the rule was a fatal flaw, noting that, “[b]ecause of the sensitivity to constitutional and other concerns, the Commission believes that the coverage of the proposal is no broader than is necessary to effectuate its purpose.”³⁰ The single case that Enforcement cites in support of a contrary position is unpersuasive on the issue.³¹ Therefore, Sisung’s controlling interest of the entities, without more, is an insufficient basis for attributing their contributions directly to him.

IV. Sisung Did Not Solicit Contributions in Violation of Rule G-37(c)

As noted above, Rule G-37(c) prohibits a municipal finance dealer from engaging in municipal securities business with an issuer if it, one of its municipal finance professionals, or a controlled PAC, has engaged in certain fundraising activities for an official of such issuer. These activities include soliciting others to

²⁸ *G-37 Approving Release*, 1994 SEC LEXIS at *19.

²⁹ *Id.* at 46.

³⁰ *Id.* at 47.

³¹ The Department cites *FAIC Securities*, Exchange Act Release No. 36937, 1996 SEC LEXIS 583 (Mar. 7, 1996). The Order simply accepts certain findings of fact and conclusions of law pursuant to an offer of settlement. Its findings are conclusory, and are not binding on any other proceeding. It cannot be read to stand for the proposition asserted by Enforcement.

make contributions, coordinating the contributions of others, and bundling contributions.³²

Because the contributions in this case are directly attributable to Sisung, he cannot be found to have solicited them. The focus of the solicitation provision is on a regulated entity's activity in connection with others, such as fundraising, rather than on its own contributions. Simply making a contribution does not involve solicitation, nor does making multiple contributions involve "bundling" funds as contemplated by the Rule.³³ Such an interpretation of Rule G-37(c) would make subsection (b) superfluous, since every contribution by a regulated entity would also be deemed to be a solicitation. Therefore, because all of the fourteen contributions at issue are attributed to Sisung himself, he did not engage in a solicitation of UPC and SIMS that would implicate Rule G-37(c).

V. LBC Members as "Officials of An Issuer"

Enforcement contends that members of the LBC are "officials of an issuer" in the context of political subdivision debt, pursuant to the definitions of the term provided in Rule G-37(g)(vi). It is unclear, however, that the members of the LBC are "officials of an issuer" pursuant to the literal language of G-37 in any situation, even in the context of general state debt offerings, much less in the context of the offerings by political subdivisions that are at issue here.

³² See G-37(c); *NASD Notice to Members* No. 95-103, 1995 NASD LEXIS 143 at *7 (Dec. 1995); *Order Approving Proposed Rule Change by Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business*, Exchange Act Release No. 34-41025, 1999 SEC LEXIS 264 (February 8, 1999).

³³ Bundling involves combining the contributions of others, possibly without combining them with a contribution by a regulated entity. See e.g. *In the Matter of Pryor, McClendon, Counts & Co., Inc.*, Exchange Act Release No. 45402, 2002 SEC LEXIS 284 (Feb. 6, 2002).

Rule G-37(g)(vi) defines “official of such issuer” and “official of an issuer” as any person who was, at the time of the contribution, an incumbent or candidate:

“(A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.”

Rule G-37(g)(vi)(A) refers to an “elective office of the issuer.” LBC members, however, are not elected. For those members who sit *ex officio*, it is possible to view election to such a position as tantamount to an election to the LBC. For instance, the State Treasurer automatically sits on the LBC by virtue of his office. A vote for a candidate for State Treasurer is effectively a vote to place an individual on the LBC. For a majority of the members, however, membership on the LBC is purely speculative at the time of their election to the State legislature. Even in the case of incumbent members, LBC membership is not assured by their continued service in a legislative office. Neither election nor re-election to the legislature carries with it automatic membership. Rather, a legislator must be appointed by the President of the Senate or the Speaker of the House either directly to the LBC or to a committee position that carries *ex officio* membership. Therefore, a person running for the legislature cannot be deemed to be a candidate “for elective office of the issuer.”

Rule G-37(g)(vi)(B) presents the same problem. This provision applies to a candidate or incumbent “for any elective office of a state or of any political subdivision, which office has authority to appoint any person” to an issuer position with the requisite

influence. Although all of the LBC members can appoint an issuer official by virtue of their proxy power, that power is not conferred by the office to which they are elected, i.e. their legislative office. The power emanates from their position on the LBC, to which they are appointed. The provision does not state that *any elected person* with the power to appoint an issuer official is within the scope of the provision. Rather, it expressly states that the individual must be a candidate for any elective office “which office” has authority to appoint an issuer official. Because the legislative members of the LBC are not elected to a position with appointing authority, they do not meet the requirements of Rule G-37(g)(vi)(B).

The same issue arises in the case of the President of the Senate and the Speaker of the House. Although those offices carry with them the power to appoint a large number of LBC members, they are not elective offices. The President and the Speaker are chosen by their respective parties *after* having been elected to the legislature. Therefore, the office to which they are elected does not carry with it the power to appoint members of the LBC.

In drafting the Rule, the MSRB attempted to create a broad definition of “official of the issuer,” noting that “[t]he definition is intended to include any state or local official or candidate (or successful candidate) who has influence over the awarding of municipal securities business.”³⁴ In attempting to create a rule with national application, the MSRB could not have anticipated the myriad and varied permutations of local governance.

Accordingly, a literal reading of Rule G-37 that would exclude the LBC from the scope

³⁴ *Notice of Filing and Order Granting Accelerated Approval of 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*, Exchange Act Release No. 34-34160, 1994 SEC LEXIS 1701 at *7 (June 3, 1994).

of the “pay to play” regulations is so at odds with the purpose of the provision, that an adjudicative body might reasonably look beyond the literal language to the purpose and intent of the rule.³⁵

However, on these facts, the Hearing Panel need not confront that issue. Even assuming that the members of the LBC could be considered “elected officials,” sufficient to satisfy the definitions in Rule G-37(g)(vi)(A) and (B), they do not exercise the required influence in the context of political subdivision debt. In order to be deemed an “official of such issuer” under both definitions, the office in question must be “directly or indirectly responsible for, or [able to] influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer.”

Enforcement argues that the LBC’s final approval power in the context of subdivision offerings constitutes the required influence, asserting that, “[t]he power to veto a deal that goes to an underwriter is in practice the power to choose the underwriter.”³⁶ It argues that the LBC can effectively choose which municipal finance dealers are selected, because it can “approve deals with some underwriters and kill deals with other underwriters.”³⁷ Enforcement contends that, as a practical matter, the LBC has power over “the *outcome* of any particular deal and thus the *outcome* of the hiring of any

³⁵ *Dick Warner Cargo Handling Corp. v Aetna Business Credit, Inc.*, 764 F.2d 126, 134 (2nd Cir. 1984) (“When the ‘plain meaning’ of statutory language leads to absurd or futile results, a court should look beyond the words to the purpose and, indeed, a court should do so even when the plain meaning does not produce absurd results, but merely an unreasonable one plainly at variance with the policy of the legislation as a whole.”); *US v. Campos-Serrano*, 404 U.S. 293, 298 (1971) (“If an absolutely literal reading of a statutory provision is irreconcilably at war with the clear congressional purpose, a less literal construction must be considered.”).

³⁶ DOE Pre-Hearing Brief, p. 15.

³⁷ *Id.* at 16.

particular underwriter,” and that in making the determination of influence, one must look beyond “formal authority.”³⁸

Enforcement’s interpretation attempts impermissibly to stretch the definition of “official of the issuer,” ignoring the precise language the MSRB chose in drafting the provision. In crafting the definition and in subsequent interpretations, the MSRB has reiterated that the definition includes anyone who, either directly or indirectly, exercises power over the *hiring* of municipal securities dealers. Had the Board believed that the final power of approval over a deal created a sufficient conflict to warrant coverage under the Rule, it could easily have written the Rule to increase its scope. Further, Enforcement cannot point to a single case or interpretative release that supports the linguistic and conceptual extension it advocates. The interpretation it seeks ignores both the language of the Rule and the practical limits of the LBC’s power.

Rule G-37 was intended to act as a preventative measure, and does not require evidence of an actual *quid pro quo*.³⁹ However, the Rule is not so broad that it covers any speculative or conceivable corrupting influence that might attach to a political contribution. In examining the extent of an official’s influence, the focus must be upon the actual authority of the office at issue.⁴⁰ The MSRB tailored the Rule in part to avoid First Amendment issues; interpreting the Rule as broadly as Enforcement proposes could implicate the potential First Amendment issues that the MSRB wanted to avoid.

³⁸ *Id.* at 15-16. (emphasis in original).

³⁹ *See Blount*, 61 F.3d at 945.

⁴⁰ *Questions and Answers concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37*, MSRB Interpretations of G-37, Q & A No. 20 (May 24, 1994) (Q: “How can a dealer determine whether an incumbent or candidate for a particular elective office will be able to award or influence the awarding of municipal securities business?” A: “The dealer must review the scope of authority of the particular office at issue”)

In the context of political subdivision debt, the LBC's authority is extremely limited. As noted above, it plays no role in the selection or hiring of financial advisers or underwriters. Rather, it reviews the final plan submitted by the subdivision for statutory compliance and economic feasibility, either approving or rejecting the application. There is evidence and testimony that it cannot go beyond these considerations in its review. There is no indication that the LBC does, in fact, go beyond its statutory authority, basing its decision upon the subdivision's choice of underwriters. As previously discussed, the majority of offerings are approved *en globo*. In instances where the application is reviewed individually, the name of the underwriter frequently does not appear on the documents reviewed by the members. Where the underwriter is named, there is simply no evidence that the members reject or approve an offering upon that basis.

Practical political considerations make such a scenario unlikely. The LBC reviews an offering only after extensive negotiations and planning have taken place in setting its terms. The process of hammering out the details of an offering requires significant time and expense. An LBC member who impeded a public works project at the culmination of a subdivision's efforts, either without explanation or solely on the basis of rewarding favored underwriters, would face a significant political backlash. In short, there is no evidence that the LBC influences the hiring of municipal securities dealers, nor is it likely to do so.

VI. Respondents Failed to Maintain Records and Report 39 Contributions

As noted previously, Rule G-8(a)(xvi) requires a municipal securities dealer to maintain records of political contributions made to issuer officials and political parties, directly or indirectly, by the firm itself, its municipal finance professionals, its executive

officers, or any dealer-controlled PAC. The Rule, in subsection (D), requires a listing of issuers with which the “municipal securities dealer has engaged in municipal securities business.” Subsection (E) requires a report of contributions to “officials of *an* issuer” (emphasis added), but is not restricted to officials of issuers with which the municipal securities dealer has engaged in municipal securities business. In other words, contributions to any issuer officials must be reported. If the import of the Rule were to require reporting only of contributions to officials of issuers with which the municipal securities dealer engaged in municipal securities business, there would be no reason to require reports of contributions to political parties, which do not engage in municipal securities business at all.

Rule G-9 requires that records of contributions be preserved for six years. Rule G-37(e)(i) requires that the dealer periodically submit reports to the MSRB on the Form G-37/G-38, based upon the records of contributions.

Contributions by spouses, affiliated companies, or other unregulated entities need not be reported “unless the contributions were directed by persons or entities subject to [Rule G-37].”⁴¹ Where a municipal securities dealer or municipal finance professional directs a contribution through a third party, the contribution is considered to be indirect.

Here, the parties have stipulated that SSC did not record or report the thirty-nine contributions evidenced by checks drawn upon UPC and SIMS accounts.⁴² All of the checks were either signed or authorized by Sisung. The parties have also stipulated that 28 of these contributions would have been reportable, had they been made directly by an

⁴¹ G-37 Adopting Release, Exchange Act Release No. 34-33686, 1994 SEC LEXIS 1023 at *22 n. 48 (April 7, 1994).

⁴² See Stip. 20

municipal finance professional.⁴³ As the Hearing Panel found earlier, all 39 contributions are attributable to Sisung in his capacity as a municipal finance professional. He signed or authorized all of them, and he delivered them personally to the recipients or the recipients' designees. His name is clearly associated with those contributions, creating, at the least, the appearance that they were being given by a municipal finance professional.⁴⁴

Even if the contributions were not directly attributable to Sisung, they would have to be reported by SSC because they were "directed" by Sisung. Clearly, Sisung controlled, and exercised complete managerial power over, UPC and SIMS. There is no evidence that any other person was responsible for determining who was to receive a political contribution. His authorization of the checks, his signature on most of them, and his personal delivery of them further demonstrate that he directed the contributions. Consequently, the contributions were indirectly made by Sisung as a municipal finance professional.

Respondents contend, however, that the reporting obligation under Rule G-37(e) does not extend to such indirect contributions made by affiliated companies. They argue that "the 'indirect violation' provisions of Rule G-37(d) expressly extend *only* to the...provisions of Rules G-37(b-c) and *do not* encompass reporting requirements under Rule G-37(e)."⁴⁵ That argument correctly notes the reach of Rule G-37(d) to substantive violations, but it ignores the specific "indirect" language of Rule G-8(a)(xvi) and its role in governing the content of reports required by Rule G-37(e). Rule G-8(a)(xvi) expressly

⁴³ See Stip. 21, as amended by Respondents' letter of April 1, 2004. The seven contributions which Respondents would not stipulate were reportable were made to legislators who were incumbent members of the LBC other than the State Treasurer, Secretary of State, or President of the Senate.

⁴⁴ 1996 G-37 Release, at *6.

⁴⁵ Respondents' Post-Hearing Brief, p. 49 (emphasis in original).

states that contributions by the listed persons must be recorded regardless of whether they were made directly or indirectly. For example, Rule G-8(a)(xvi)(E) states, in part, that record must reflect “the contributions, direct or *indirect*, to officials of an issuer and payments, direct or *indirect*, made to political parties of states and political subdivisions” (emphasis added).

Rule G-37(e) requires that a municipal securities dealer report all contributions required to be recorded under Rule G-8(a)(xvi). Therefore, because indirect contributions must be recorded under Rule G-8(a)(xvi), they also must be reported. MSRB interpretations and clarifying statements,⁴⁶ as well as SEC orders,⁴⁷ are consistent with that conclusion. Accordingly, by failing to maintain and preserve records of the indirect contributions, SSC and Sisung violated Rules G-8 and G-9. By failing to report the contributions, SSC violated Rule G-37(e).

Sanctions

The recordkeeping and reporting violations are not egregious. Respondents had a good faith, albeit erroneous, belief that the 39 contributions did not have to be recorded or reported. However, they did not consult with the MSRB to confirm their conclusions about recordkeeping and reporting, and the violations occurred in more than a single year. Under the circumstances, to remedy the violations and deter future ones, a fine should be imposed.

⁴⁶ See *G-37 Adopting Release*, *supra* text accompanying note 1; *Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37*, MSRB Interpretation to Rule G-37, Q & A No. 36 (May 24, 1994) (contributions by municipal securities dealers, municipal finance professionals, executive officers, and controlled PACs must be reported whether “direct or indirect.”).

⁴⁷ *FAIC Securities*, Exchange Act Release No. 36937, 1996 SEC LEXIS 583, *10 (Mar. 7, 1996) (firm and its municipal finance professionals violated Rules G-8 and G-37(e) by failing to record or report “all political contributions, whether direct or indirect, to elected officials”).

Enforcement proposes batching the violations, as permitted by the NASD SANCTION GUIDELINES.⁴⁸ The Hearing Panel agrees since the conduct was not fraudulent, there was no injury to public investors, and the violations resulted from a single systematic cause.

The GUIDELINES for recordkeeping violations call for a fine of \$1,000 to \$10,000.⁴⁹ For failing to file reports required by MSRB Rule G-37, they call for a fine of \$1,000 to \$5,000.⁵⁰ Enforcement proposes that SSC and Sisung be fined \$10,000, jointly and severally for failure to maintain records of the 39 contributions. Enforcement proposes that SSC be fined \$10,000 for failure to report the contributions. The Hearing Panel agrees with those proposals, and finds such fines to be appropriately remedial under the facts of this case. SSC and Sisung will also be assessed costs in the total amount of \$2,815.20, consisting of a \$750 administrative fee and a \$2,065.20 transcript fee.

Conclusions

Sisung Securities Corporation is found not liable for participation in municipal securities business, in violation of MSRB Rule G-37. Sisung Securities Corporation and Lawrence J. Sisung, Jr., are found not liable for (1) facilitating violations of MSRB Rule G-37(b); and (2) soliciting political contributions, in violation of MSRB Rule G-37(c).⁵¹

For failing to maintain records of 39 political contributions, in violation of MSRB Rules G-8 and G-9, Sisung Securities Corporation and Lawrence J. Sisung, Jr. are fined

⁴⁸ NASD SANCTION GUIDELINES, at 6 (2004 ed.).

⁴⁹ *Id.*, at 32.

⁵⁰ *Id.*, at 78.

⁵¹ In light of these conclusions of no liability under Rule G-37, the Hearing Panel does not reach the questions of Constitutional and administrative law, or the federalism issues, raised by Respondents in their pre- and post-hearing submissions.

\$10,000, jointly and severally. For failing to report political contributions, in violation of MSRB Rule G-37(e), Sisung Securities Corporation is fined \$10,000. Sisung Securities Corporation and Lawrence J. Sisung, Jr., jointly and severally, are assessed costs of \$2,815.20.

The sanctions shall become effective on a date determined by NASD, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of NASD.

Alan W. Heifetz
Hearing Officer
For the Hearing Panel

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