

professional, employed by the broker, dealer or municipal securities dealer to obtain or retain municipal securities business with such issuers].

(f) The Board will accept additional information related to contributions made to officials of issuers and payments to political parties of states and political subdivisions voluntarily submitted by brokers, dealers, or municipal securities dealers or others provided that such information is submitted in accordance with [Board rule G-37 filing procedures] *section (e) of this rule*.

* * * * *

[Rule G-37 Filing Procedures. Each dealer is required to file two copies of Form G-37. Each dealer is required to file Form G-37 within thirty (30) calendar days after the end of each calendar quarter. (These dates correspond to January 31, April 30, July 31, and October 31).]

Rule G-38. Consultants

(a) Definitions.

(i) The term "consultant" means any person used by a broker, dealer or municipal securities dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of such broker, dealer or municipal securities dealer where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the broker, dealer or municipal securities dealer or any other person; provided, however, that the following persons shall not be considered consultants for purposes of this rule: (A) a municipal finance professional of the broker, dealer or municipal securities dealer; and (B) any person whose sole basis of compensation from the broker, dealer or municipal securities dealer is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the municipal securities business that the broker, dealer or municipal securities dealer is seeking to obtain or retain.

(ii) The term "issuer" shall have the same meaning as in rule G-37(g)(ii).

(iii) The term "municipal finance professional" shall have the same meaning as in rule G-37(g)(iv).

(iv) The term "municipal securities business" shall have the same meaning as in rule G-37(g)(vii).

(v) The term "payment" shall have the same meaning as in rule G-37(g)(viii).

(b) Written Agreement. Each broker, dealer or municipal securities dealer that uses a consultant shall evidence the consulting arrangement by a writing

setting forth, at a minimum, the name, company, role and compensation arrangement of each such consultant ("Consultant Agreement"). Such Consultant Agreement must be entered into before the consultant engages in any direct or indirect communication with an issuer on behalf of the broker, dealer or municipal securities dealer.

(c) Disclosure to Issuers. Each broker, dealer or municipal securities dealer shall submit in writing to each issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer, which information shall include the name, company, role and compensation arrangement of any consultant used, directly or indirectly, by the broker, dealer or municipal securities dealer to attempt to obtain or retain municipal securities business with each such issuer. Such information shall be submitted to the issuer prior to the selection of any broker, dealer or municipal securities dealer in connection with such municipal securities business.

(d) Disclosure to Board. Each broker, dealer or municipal securities dealer shall submit to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, and the Board shall make public, reports of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. Two copies of the reports must be submitted to the Board on Form G-37/G-38 within thirty (30) calendar days after the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31). Such reports shall include, for each consultant, in the prescribed format, the consultant's name, company, role and compensation arrangement. In addition, such reports shall indicate the dollar amount of payments made to each consultant during the report period and, if any such payments are related to the consultant's efforts on behalf of the broker, dealer or municipal securities dealer which resulted in particular municipal securities business, then that business and the related dollar amount of the payment must be separately identified.

* * * * *

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 Board 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 Board 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

Over the last few years, the Board has been concerned about abuses associated with the awarding of municipal securities business. Rule G-37, which became effective in April 1994, prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional associated with the dealer, or any political action committee controlled by the dealer or any municipal finance professional.⁵ The rule also prohibits a dealer from doing anything indirectly which would result in a violation of the rule if done directly by the dealer. For example, a violation would result if a dealer engages in municipal securities business with an issuer after directing third parties (such as consultants) to make contributions to that issuer. In addition to recording and disclosing political contributions, rule G-37 currently requires dealers to record and disclose on Form G-37 those issuers with which the dealer has engaged in municipal securities business and, where applicable, the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain business with such issuers.

Rule G-20, on gifts and gratuities, prohibits dealers from, directly or indirectly, giving or permitting to be given any thing or service of value in excess of \$100 per year to any person, other than an employee or partner of the dealer, in relation to the municipal securities activities of the person's employer. All gifts given by the dealer and its associated persons, or by consultants at the direction of the dealer, are used to compute the \$100 limitation and this limitation applies to gifts and gratuities to customers, individuals associated with issuers, and employees of other dealers.⁶

⁵ Rule G-37(b) contains *de minimis* exception for certain contributions made by municipal finance professionals.

⁶ Rule G-20(b) exempts "normal business dealings" from the \$100 annual limit. These payments are defined as occasional gifts of meals