



May 31, 1995

Benjamin L. Ginsberg
Counsel, Wilson for President Committee, Inc.
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037-1350

Re: Rule G-37, on political contributions and prohibitions on municipal securities business

Dear Mr. Ginsberg:

This is in response to your letter dated May 5, 1995, concerning the application of the Board's rule G-37 to a campaign for President of the United States. You ask specifically about the application of rule G-37 to contributions to Governor Pete Wilson's presidential campaign. The Board reviewed your letter at its May 18-19, 1995 meeting and has authorized this response.

As you know, rule G-37, among other things, prohibits any broker, dealer or municipal securities dealer ("dealer") from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional. The only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals. Specifically, contributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, \$250 to each official, per election. Rule G-37(g)(i) defines the term "contribution" as any "gift, subscription, loan, advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office..." The Board previously has clarified that rule G-37 does not encompass all contributions to candidates for federal office. Rather, for federal office, the rule encompasses only those contributions to a current issuer official who is seeking election to federal office.¹

You ask whether the Governor of California is an "official of an issuer" for purposes of rule G-37. Rule G-37(g)(vi) defines the term "official of an issuer" as "any person (including any election committee for such 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

¹ See *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 14.

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 official(s) of an issuer..." as defined above. The Board has not provided any exemptions from, or exception to, the definition "official of an issuer" as set forth in rule G-37.

The Board does not make determinations concerning whether a particular individual meets the definition of "official of an issuer." The Board believes that because such determinations may involve particular issues of fact, such decisions must generally be the dealer's responsibility. The Board has, however, provided guidance in this area by recommending that dealers review the scope of authority conferred upon the particular office (and not the individual) to determine whether the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business.² For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. In such circumstances, the Board previously has stated that it intended to include the governor as an official of the issuer.³

You ask whether rule G-37 applies to candidates for President of the United States. As noted above, the term "contribution" as defined in rule G-37(g)(i) includes payments "for the purpose of influencing any election for federal, state or local office." [Emphasis added]. Thus, rule G-37 is applicable to contributions given to officials of issuers who seek election to federal office, such as the House of Representatives, the Senate or the Presidency.

You ask whether rule G-37 unfairly impinges upon Governor Wilson's equal protection and freedom of speech and association rights in the context of the Presidential election since he is, at this time, the only candidate with respect to whom those covered by the rule face "disqualification" from municipal securities business for making contributions. You also state that rule G-37 violates the First Amendment rights of association or speech by limiting the ability of municipal finance professionals to contribute to Governor Wilson's presidential campaign. In its order approving rule G-37, the Securities and Exchange Commission stated that:

any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements. The MSRB cannot overlook potential conflicts of interest solely because there are candidates for the same federal office who do not face the same conflicts. In any event, the resulting burden to current local officials does not appear to be significant.⁴

² *Id.*

³ *See MSRB Reports*, Vol. 14, No. 4 (August 1994) at 24.

⁴ *See Securities Exchange Act Release No. 33868* (April 7, 1994) at 41-42; 59 FR 17621.

The Board believes that rule G-37 is not the product of governmental action and is not subject to Constitutional review. However, as you may be aware, these issues currently are pending before the D.C. Court of Appeals.

You ask whether the creation of the District of Columbia Financial Responsibility and Management Assistance Authority means that the President of the United States is an "official of an issuer" and that all candidates for President now fall under rule G-37. Rule G-37(g)(vi) defines "official of an issuer" as "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 political subdivision, which office has authority to appoint any official(s) of an issuer." [Emphasis added]. The President does not hold an elective office of an "issuer" of municipal securities. In addition, the President is not, and would not become, an issuer official by virtue of his authority to appoint members to the D.C. Financial Responsibility and Management Assistance Authority because the Presidency is not an elective office of a state or political subdivision.

You ask a number of questions concerning what activities are permissible by those individuals covered by the rule. You ask whether the \$250 *de minimis* contribution exception in rule G-37 applies to Presidential candidates. As noted previously, the only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals. Specifically, contributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, \$250 to each official, per election. The Board previously has stated that, if an issuer official is involved in a primary election prior to the general election, the municipal finance professional who is entitled to vote for such official may contribute up to \$250 for the primary election and \$250 for the general election to each such official.⁵

In regard to the Presidential general election campaign, all municipal finance professionals may contribute the \$250 *de minimis* amount to an issuer official whose name has been placed on the ballot of the Presidential election in their state of residence without causing the dealer to be banned from business with the issuer. However, any municipal finance professional wishing to make a contribution to a Presidential general election campaign should first contact the Federal Election Commission ("FEC") to determine the permissibility of such contributions under FEC regulations (*i.e.*, whether the candidate or nominee may accept individual contributions or whether they are precluded from doing so because the campaign is being "publicly funded").

⁵ See *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13.

In regard to the Presidential primary election campaign, all municipal finance professionals may contribute the \$250 *de minimis* amount to an issuer official whose name has been placed on the Presidential primary ballot in their state of residence, or otherwise has been qualified to be considered at the state caucus or convention, without causing the dealer to be banned from business with the issuer.

You ask whether an individual covered by rule G-37 may raise money from others on behalf of Governor Wilson. Rule G-37(c) provides that no dealer or any municipal finance professional shall solicit any person or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business. A violation of rule G-37(c) does not trigger a two-year ban on engaging in municipal securities business with an issuer; however, if the appropriate enforcement agency finds that a violation of rule G-37(c) has occurred, the enforcement agency will determine the appropriate sanction.⁶ You ask whether the *de minimis* exception applies to solicited and bundled contributions of \$250 and less. Solicitations of contributions are prohibited by the rule (for those covered); therefore, there is no *de minimis* exception.

You ask whether a covered individual may hold a party in his home for a Presidential candidate if contributions are raised at the party. The Board has stated that rule G-37 is not intended to restrict municipal finance professionals from engaging in personal volunteer work.⁷ Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (e.g., cab fares and personal meals), would not constitute a contribution. However, the expenses incurred for hosting a party to solicit contributions would be viewed as a contribution.⁸ The Board also has stated that if a dealer's or a municipal finance professional's name appears on fundraising literature for an issuer official for which the dealer is engaging or seeking to engage in municipal securities business then there is a presumption that such activity is a solicitation by the dealer or municipal finance professional in violation of section (c) of the rule.⁹

Finally, you ask whether spouses and eligible children of covered personnel may contribute to a Presidential candidate. The Board has stated that contributions to issuer officials by municipal finance professionals' spouses and household members are not covered by rule G-

⁶ The enforcement agencies are: for securities firms, the National Association of Securities Dealers; and for bank dealers, the Federal Deposit Insurance Corporation, the Federal Reserve Board, or the Office of the Comptroller of the Currency.

⁷ See *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15.

⁸ *Id.*

⁹ See *MSRB Reports*, Vol. 14, No. 5 (December 1994) at 17.

37 unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.¹⁰

Please call me if you have any questions concerning the issues discussed in this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher A. Taylor".

Christopher A. Taylor
Executive Director

¹⁰ See *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15.