

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 27, 2010
TO: City Council
FROM: Kirby Warner, Interim Administrative Services Director
SUBJECT: Recommendation to Adopt a Resolution of Approving a Statement of Investment Policy

RECOMMENDATION: “The City Council adopt Resolution No. 2010-60, a Resolution of the City Council of the City of Banning Adopting a Statement of Investment Policy.”

JUSTIFICATION: City policy requires an annual review of the investment policy.

BACKGROUND/ANALYSIS: Our current policy focuses on safety, liquidity and availability, rather than on yield. Under the policy, a maximum of 40% of the City’s investments may be placed in an investment other than the State of California’s Local Agency Investment Fund (LAIF). The other investments cannot exceed a 36 month maturity. Per the State Treasurer’s Office, pursuant to the California Government Code monies invested with LAIF cannot be borrowed or withheld by the State of California. These monies are protected by statute.

Currently, approximately 40 percent of the City’s available operating money is invested in authorized securities (other than LAIF). The balance is invested in LAIF. The LAIF rate has dropped from 1.377% percent to .520% percent from July 1, 2009 to the present. Our current average rate on investments outside of LAIF is .793%. Our current average rate on investments overall (excluding bond funds) is .649%. In 2008-09, the LAIF rate ranged from 2.787% to 1.530% and the City earned approximately \$1,772,000 of interest on its investments. In 2009-10, the total interest earned has dropped to approximately \$ 600,000.

Staff is not recommending any changes to the policy at this time.

FISCAL DATA: No immediate fiscal impact is anticipated. The monthly Report of Investments will track any changes in investment income.

RECOMMENDED BY:



APPROVED BY:



RESOLUTION NO. 2010-60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING A STATEMENT OF INVESTMENT POLICY

WHEREAS, under the laws of the State of California, it is the responsibility of the City Council to secure and protect the public funds of the City of Banning (hereinafter "City"), and to establish proper safeguards, controls, and procedures to maintain these funds in a lawful, rational and auspicious manner through the adoption of an investment policy as provided herein (the "Investment Policy"); and

WHEREAS, the Investment Policy shall include the prudent and secure investment of those funds that are not immediately needed to meet cash disbursements, in a manner anticipated to provide additional benefit to the electorate of the City of Banning; and

WHEREAS, The Statement of Investment Policy was originally adopted under Resolution 2009-57, which expired by its terms on July 14, 2010.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING hereby adopts the following as the "Statement of Investment Policy" of the City of Banning.

Section 1: Scope.

This Statement of Investment Policy pertains to those funds under the control of the City Council, designated for the ongoing operations of the City and the City's Redevelopment Agency; and concerns the deposit, maintenance, and safekeeping of all such funds, and the investments made with these funds. This Policy does not apply to pension moneys, deferred compensation funds, trustee, and certain other non-operating funds.

Section 2: Purpose Policy Statement.

The purpose of this Statement of Investment Policy is to provide the public and those involved in servicing the investment requirements of the City, and any other interested party, a clearer understanding of the Government Codes, regulations and internal guidelines that will be observed in maintaining and investing those funds not immediately needed to meet liabilities.

Section 3: Investment Objectives.

The underlying objective of the City Council is to protect the safety of the principal of the portfolio through the judicious purchase of those legal investments permitted to local agencies, as defined in the State of California Government Codes, consistent with current conditions and the other dominant objectives pursuant to managing a local agency portfolio, namely:

- A. **Safety:** The City Council takes as its primary responsibility to maintain the safe return of all principal placed in investments by avoiding decisions that might result in losses through fraud, default, or adverse market conditions. Importance is also accorded to the protection of accrued interest earned on any investment instrument.
- B. **Liquidity:** The City Council accepts as an imperative that a majority (a minimum of 60%) of all investments are in items that are immediately negotiable, as the portfolio is a cash management fund. It shall be assumed that all investments shall remain sufficiently liquid in order to meet unexpected cash calls.
- C. **Availability:** Due to the nature of a public funds portfolio, the City Council finds that it is mandatory that moneys be available to meet the monetary requirements inherent to operating a public entity. Thus funds should be invested in such a manner that money will always be available without risk of trading loss to meet normal cash requirements. A vast majority of the moneys invested by the City Council should never require the realization of immoderate losses should an unforeseen cash demand require the sale of investments prior to maturity. A sufficient portion of all funds shall be invested in securities providing a high degree of availability, that is, in securities easily sold or converted to cash in a timely manner, with little or no loss of interest earnings.
- D. **Yield:** While it is considered desirable to obtain a respectable yield, yield shall not be the driving force in determining which investments are to be selected for purchase. Yield is to be given lesser weight in the investment decision than safety, liquidity, or availability.

The City Council shall undertake to place investments with the objective of obtaining a reasonable rate of return under prevailing market conditions. In pursuit of this goal, maximization of yield shall be of lesser concern than either safety of principal, liquidity of the investment, or availability of the invested funds. The City Council undertakes to be prudently cognizant of those factors within the marketplace that may be indicative of either favorable or hazardous conditions relative to the City's investments. The portfolio is to be managed under the strategy of minimal turnover in investments however, with sufficient activity to minimize losses due to adverse changes in market conditions.

Section 4: Prudence.

The City Council recognizes that it is subject to the "Prudent Investor Standard" whenever making a decision regarding the investment of the City's funds. This rule states:

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, general economic conditions and the anticipated needs of the agency, that a prudent person acting in like capacity and familiarity with those matters would use in the conduct of funds

of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency (Cal. Gov. Code §53600.3).

The City Council, and those acting under the auspices of the City Council, is deemed to have a fiduciary trustee relationship with the public for the public funds, and all investment decisions will be made in a manner sustaining this responsibility.

Section 5: Delegation of Authority.

While the City Council has final responsibility for all investment decisions, other City personnel are required to aid in the day to day administration of those decisions. Those staff members currently authorized to act on behalf of the City Council are listed below. This list is subject to change. Parties involved in investment transactions with the City Council are deemed to be on notice of the contents of the most current copy of this Policy, and all pertinent authorizing documents, at the time of accepting written or verbal instructions from any staff member. The Councilpersons and deputized personnel listed below are designated to perform such approved investment related tasks as the City Council shall from time to time assign, to arrange any required notifications, and to execute the documents necessary to put into effect the decisions of and for the City Council:

Title

Mayor

Mayor Pro Tem

City Councilperson

City Councilperson

City Councilperson

Administrative Services Director

City Manager

Other persons, both inside and outside City employment, may act in the role of assistant or advisor to those listed above, to aid in the timely and proper settlement of investment transactions. Such persons may not authorize, approve, or initiate any trading activities. **Only the persons listed above may initiate trading activity and only in a manner consistent with the instructions of the City Council.**

City Council directives to the City Manager and Administrative Services Director are as follows:

- Make investments in accordance with this Policy.
- Make phone calls to, or otherwise communicate with, LAIF or brokerage firm for investment purposes and to withdrawal and deposit funds as required to meet the City's cash flow requirements between meetings of the City Council.
- Make transaction withdrawals for cash flow requirements up to a maximum of limit of \$3,000,000 per single transaction without prior approval of the City Council.

Section 6: Securities Custody.

As required by the Government Code, the City Council shall establish a third party custody and safekeeping account to which all negotiable instruments shall be delivered upon purchase on a payment versus delivery basis. No negotiable, deliverable, securities or investments will be left in the custody of any brokerage firm or issuing party, including any collateral from Repurchase Agreements.

Section 7: Authorized Investments and Limitations.

The Government Code of the State of California, primarily within sections 53600 et. seq., sets out the legal authority for inclusion of certain types of investment vehicles in a California local agency's investment portfolio. Consistent with those sections, under no circumstances will the City Council purchase an investment that is not specifically authorized for a local agency under these, or other code sections that may apply, or might later be enacted, pertaining to local agency investments. It shall be a requirement of all investment professionals performing any transaction on behalf of the City that they possess a complete understanding of the acceptability of the subject investment under those code sections.

A "Table of Investments Permitted Local Agencies by the California Government Codes" is attached hereto, marked Attachment "A" and by this reference made a part hereof. Attachment "A" briefly describes the principal types of securities legal within the Government Code sections noted above, and outlines the various limitations included in these sections. From these permitted investments, the Council shall determine those investment types that best meet the needs and abilities of the City.

Section 8: Authorized and Suitable Investments.

It is hereby determined by the City Council that, due to the exceptional safety, liquidity and availability provided by the State of California's Local Agency Investment Fund (LAIF), a minimum of 60% of the City's operating moneys shall be placed in the LAIF, with the exception of certain bond proceeds and required deposits that pre-existing contractual obligations restrict to other investment types. Such exceptions shall comply with all appropriate Government Codes, ordinances and other restrictions inherent to the conditions requiring such exceptions.

It is hereby further determined by the City Council that not more than 40% of the City's operating moneys may be placed in the following types of securities:

- Securities issued or guaranteed by the U.S. Treasury or agencies of the United States Government
- Bank Certificates of Deposit
- Shares of savings certificates of savings and loan associations
- Mortgage backed securities

Section 9: Authorized Term of Investments.

It is hereby determined that the maximum maturity period for any portion of invested operating moneys shall not exceed thirty-six (36) months. This shall not apply to certain bond proceeds or other non-operating moneys of the City.

Section 10: Authorized Dealer List – Conflict of Interest Prohibition.

It is prohibited for a transaction to be entered into with any securities broker, dealer or bank investment department or subsidiary prior to that entity being designated an Authorized Dealer, and placed on the Authorized Dealer List. Authorized Dealers shall be selected on an as needed basis to meet specific needs of the City Council.

No member of the City Council, nor any other official or employee of the City, may accept any gift, honoraria, gratuity or service of value in violation of the regulations set forth by the Fair Political Practices Commission, the Government Code, additional limitations set forth by City ordinance, or internal requirements of the Treasurer and Administrative Services Director. The City Council is prohibited from conducting any business with any broker, dealer, or securities firm that has made a political contribution to the City Treasurer or any member of the City Council, or any candidate for these offices, within the 48 month period immediately following the date of the political contribution, in an amount exceeding the limitation contained in Rule G-37 of the Municipal Securities Rulemaking Board. A copy of Rule G-37 is attached hereto and incorporated herein as Attachment "B."

Section 11: Reporting.

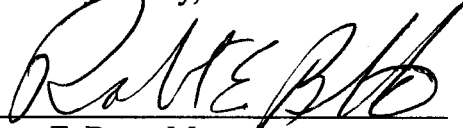
The Administrative Services Director shall maintain investment records legally required or otherwise requested by the City Council and prepare a report for the Council on a monthly basis stating the holdings, status, and earnings of the portfolio. The Statement of Investment Policy will be provided at the start of each fiscal year annually for review and approval of the City Council. Should conditions arise, or legislation become effective that behooves consequential changes within the Policy during the year, the revised policy will again be addressed by the City Council.

Section 12: Review.

This Statement of Investment Policy shall be reviewed annually and approved by the City Council in an open public meeting. Upon request, it will be provided to banks and brokers and to other effected persons or entities; and to any member of the electorate

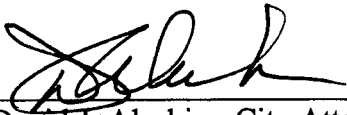
wishing to review this document. The City reserves the right to provide these documents on a cost recovery basis.

PASSED, APPROVED AND ADOPTED this 27th day of July, 2010.



Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:



David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:



Marie A. Calderon, City Clerk

CERTIFICATION:

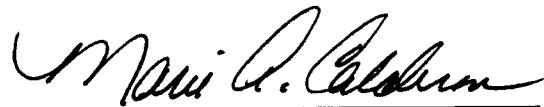
I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-60 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 27th day of July, 2010 by the following vote, to wit:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, City Clerk
City of Banning, California

ALLOWABLE INVESTMENT INSTRUMENTS
 PER STATE GOVERNMENT CODE (AS OF JANUARY 1, 2010)^a
 APPLICABLE TO ALL LOCAL AGENCIES^b

see "Table of Notes for Figure 1" on the next page for footnotes related to this figure

INVESTMENT TYPE	MAXIMUM MATURITY ^c	MAXIMUM SPECIFIED % OF PORTFOLIO ^d	MINIMUM QUALITY REQUIREMENTS
LOCAL AGENCY BONDS	5 YEARS	— NONE —	— NONE —
U.S. TREASURY OBLIGATIONS	5 YEARS	— NONE —	— NONE —
STATE OBLIGATIONS —CA AND OTHERS	5 YEARS	— NONE —	— NONE —
CA LOCAL AGENCY OBLIGATIONS	5 YEARS	— NONE —	— NONE —
U.S. AGENCY OBLIGATIONS	5 YEARS	— NONE —	— NONE —
BANKERS' ACCEPTANCES	180 DAYS	40% ^e	— NONE —
COMMERCIAL PAPER —SELECT AGENCIES ^f	270 DAYS	25% OF THE AGENCY'S MONEY ^g	<i>A-1/P-1/F-1</i> ^h ; if the issuer has issued long-term debt it must be rated "A" without regard to modifiers ^h
COMMERCIAL PAPER —OTHER AGENCIES ⁱ	270 DAYS	40% OF THE AGENCY'S MONEY ^j	<i>A-1/P-1/F-1</i> ^h ; if the issuer has issued long-term debt it must be rated "A" without regard to modifiers ^h
NEGOTIABLE CERTIFICATES OF DEPOSIT	5 YEARS	30% ^k	— NONE —
CD PLACEMENT SERVICE	5 YEARS	30% ^k	— NONE —
REPURCHASE AGREEMENTS	1 YEAR	— NONE —	— NONE —
REVERSE REPURCHASE AGREEMENTS AND SECURITIES LENDING AGREEMENTS	92 DAYS ^l	20% OF THE BASE VALUE OF THE PORTFOLIO	— NONE — ^m
MEDIUM-TERM NOTES ⁿ	5 YEARS	30%	"A" RATING
MUTUAL FUNDS AND MONEY MARKET MUTUAL FUNDS	N/A	20% ^o	MULTIPLE ^{p,q}
COLLATERALIZED BANK DEPOSITS	5 YEARS	— NONE —	— NONE —
MORTGAGE PASS-THROUGH SECURITIES	5 YEARS	20%	"AA" RATING ^r
BANK/TIME DEPOSITS	5 YEARS	— NONE —	— NONE —

TABLE OF NOTES FOR FIGURE 1

- A. Sources: Government Code Sections 16429.1, 53601, 53601.8, 53635, and 53638.
- B. Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- C. Government Code Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- D. Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- E. No more than 30 percent of the agency's money may be in Bankers' Acceptances of any one commercial bank.
- F. "Select Agencies" are defined as a "city, a district, or other local agency that do[es] not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body."
- G. No more than 10 percent of agency's money may be invested in any one issuer's commercial paper.
- H. Issuing corporation must be organized and operating with the U.S. and have assets in excess of \$500,000,000.
- I. "Other Agencies" are counties, a city and county, or other local agency "that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body." Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set for "Select Agencies," above.
- J. No more than 10 percent of the of the agency's money may be invested in the Commercial Paper of any one corporate issuer.
- K. No more than 30 percent of the agency's total funds may be invested in CDs authorized under Sections 53601.8, 53635.8, and 53601 (h) combined.
- L. Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- M. Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- N. "Medium-term notes" are defined in Government Code Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating with the U.S. or by depository institutions licensed by the U.S. or any state and operating within the U.S."
- O. No more than 10 percent invested in any one mutual fund.
- P. A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Government Code Sections 53601 and 53635.
- Q. A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years experience investing in money market instruments with assets under management in excess of \$500 million.
- R. Issuer must have an "A" rating or better for the issuer's debt as provided by a nationally recognized rating agency.
- S. A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Government Code Section 53601, subdivisions (a) to (n).



Rule G-37

Political Contributions and Prohibitions on Municipal Securities Business

(a) *Purpose.* The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 municipal securities dealers to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a broker, dealer or municipal securities dealer.

(b) *Ban on Municipal Securities Business.*

(i) No broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) the broker, dealer or municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional; provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of \$250 by any municipal finance professional to each official of such issuer, per election.

(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.

(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the period beginning six months prior to the individual becoming a municipal finance professional.

(c) *Prohibition on Soliciting and Coordinating Contributions.*

(i) No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall solicit any person, including but not limited to any affiliated entity of the broker, dealer or municipal securities dealer, or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

(ii) No broker, dealer or municipal securities dealer or any individual designated as a municipal finance professional of the broker, dealer or municipal securities dealer pursuant to subparagraphs (A), (B), or (C) of paragraph (g)(iv) of this rule shall solicit any person, including but not limited to any affiliated entity of the broker, dealer or municipal securities dealer, or political action committee to make any payment, or shall coordinate any payments, to a political party of a state or locality where the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

(d) *Circumvention of Rule.* No broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e) *Required Disclosure to Board.*

(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board Form G-37 setting forth, in the prescribed format, the following information:

(A) for contributions to officials of issuers (other than a contribution made by a municipal finance professional or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed \$250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional or a non-MFP executive officer to a political party of a state or a political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed \$250 per year) made by the persons and entities described in subclause (2) of this clause (A):

(1) the name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments during such calendar quarter, listed by state;

(2) the contribution or payment amount made and the contributor category of each of the following persons and entities making such contributions or payments during such calendar quarter:

(a) the broker, dealer or municipal securities dealer;

(b) each municipal finance professional;

(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(B) for contributions to bond ballot campaigns (other than a contribution made by a municipal finance professional or a non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed \$250 per ballot initiative) made by the persons and entities described in subclause (2) of this clause (B):

(1) the official name of each bond ballot campaign receiving contributions during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, listed by state;

(2) the contribution amount made and the contributor category of each of the following persons and entities making such contributions during such calendar quarter:

(a) the broker, dealer or municipal securities dealer;

(b) each municipal finance professional;

(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(C) a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business during such calendar quarter, listed by state, along with the type of municipal securities business;

(D) any information required to be included on Form G-37 for such calendar quarter pursuant to paragraph (e)(iii);

(E) such other identifying information required by Form G-37; and

(F) whether any contribution listed in this paragraph (e)(i) is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G-37 received from any broker, dealer or municipal securities dealer.

(ii) No broker, dealer or municipal securities dealer shall be required to send Form G-37 to the Board for any calendar quarter in which either:

(A) such broker, dealer or municipal securities dealer has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or

(B) such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(1) had not engaged in municipal securities business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(2) has sent to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G-37 and G-37x under this paragraph (e)(ii) and rule G-8(a)(xvi), and (c) such other identifying information required by Form G-37x;

provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G-37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any broker, dealer or municipal securities dealer.

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G-37 the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (B) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G-37 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(iv) A broker, dealer or municipal securities dealer that submits Form G-37 or Form G-37x to the Board shall either:

(A) send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(B) submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37 and G-37x*.

(f) *Voluntary Disclosure to Board.* 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 section (e) of this rule.

(g) *Definitions.*

(i) The term "contribution" means 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; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office.

(ii) The term "issuer" means the governmental issuer specified in section 3(a)(29) of the Act.

(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.

(iv) The term "municipal finance professional" means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

(B) any associated person (including but not limited to any affiliated person of the broker, dealer or municipal securities dealer, as defined in rule G-38) who solicits municipal securities business;

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person designated by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G-8(a)(xvi) is deemed to be a municipal finance professional. Each person designated a municipal finance professional shall retain this designation for one year after the last activity or position which gave rise to the designation.

(v) The term "non-MFP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers.

Each person listed by the broker, dealer or municipal securities dealer as a non-MFP executive officer pursuant to rule G-8(a)(xvi) is deemed to be a non-MFP executive officer.

(vi) The term "official of such issuer" or "official of an issuer" means 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 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.

(vii) The term "municipal securities business" means:

(A) the purchase of a primary offering (as defined in rule A-13(f)) of municipal securities from the issuer on other than a competitive bid basis (e.g., negotiated underwriting); or

(B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (e.g., private placement); or

(C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or

(D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(viii) The term "payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

(ix) Except as used in section (c), the term "solicit" means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i).

(x) The term "bond ballot campaign" means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.

(h) *Operative Date.* The prohibition on engaging in municipal securities business, as described in section (b) of this rule, arises only from contributions made on or after April 25, 1994.

(i) *Application for Exemption.* A registered securities association with respect to a broker, dealer or municipal securities dealer who is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer, upon application, may exempt, conditionally or unconditionally, a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors:

(i) whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule;

(ii) whether such broker, dealer or municipal securities dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the broker, dealer or municipal securities dealer;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or otherwise an employee of the broker, dealer or municipal securities dealer, or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g, federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) *Automatic Exemptions.*

(i) A broker, dealer or municipal securities dealer that is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (1) the broker, dealer or municipal securities dealer must have discovered the contribution which resulted in the prohibition on business within four months of the date of such contribution; (2) such contribution must not have exceeded \$250; and (3) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the broker, dealer or municipal securities dealer.

(ii) A broker, dealer or municipal securities dealer is entitled to no more than two automatic exemptions per 12-month period.

(iii) A broker, dealer or municipal securities dealer may not execute more than one automatic exemption relating to contributions by the same municipal finance professional regardless of the time period.

- [Instructions for Forms G-37, G-37x and G-38t](#)
- [View and Print Form G-37](#)
- [View and Print Form G-37x](#)
- [Rule G-37 Interpretive Questions and Answers](#)