



October 29, 2010

Leslie Carey, Esq.
Associate General Counsel
Municipal Securities rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2010-30: Notice of New Interpretive Guidance and Request for Comment on Dealer-Affiliated PACs Under Rule G-37

Dear Ms. Carey:

The Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates this opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB's") Request for Comment in Notice 2010-30 (the "Notice").² In September 2009, the MSRB sought comments on whether broker-dealers should be required to disclose the covered political contributions made by PACs that are controlled by an affiliated bank or bank holding company, in addition to those PACs controlled by the broker-dealer or its municipal finance professionals ("MFPs") as currently required under the Rule.³ In the current Notice, the MSRB scales back this requirement by proposing that broker-dealers disclose the identities of affiliated PACs ("Affiliated PACs") without disclosing their contributions ("Proposal").

¹ SIFMA brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² MSRB Notice 2010-30 (August 25, 2010).

³ See, MSRB Notice 2009-51.

We commend the MSRB's attempt to develop a tool to further police indirect violations of Rule G-37 and to make it reasonable by limiting the disclosure requirements initially set forth in the September 2009 notice. However, the MSRB does not make clear in this Proposal as to what is meant by Affiliated PACs. We presume that it is being defined in the same way as in the September 2009 notice -- PACs controlled by an affiliated bank or bank holding company. The MSRB should confirm this so there is no question as to whether the term covers PACs controlled by the broker-dealer or its MFPs. Rule G-37 already requires broker-dealers to disclose covered contributions made by such broker-dealer/MFP controlled PACs and imposes a two-year ban when such contribution is made. Requiring the disclosure of controlled PACs along side Affiliated PACs would not add to the extensive restrictions already in place for controlled PACs, but rather, add to the confusion by creating a false implication that Affiliated PACs are on par with broker-dealer/MFP controlled PACs. Indeed, to the extent that a broker-dealer or its MFP controls a trade association's PAC, as further clarified in the proposed Interpretations in the Notice, that PAC's contributions to a covered candidate would have to be reported by the broker-dealer and trigger a two-year ban on municipal securities business.

Moreover, the Proposal to require disclosure of the identity of affiliated bank and bank holding company PACs suffers from the same difficulties as those contained in the September 2009 notice. Indeed, although disclosing the names of such Affiliated PACs would result in more information being available, it would not be the right information. By listing Affiliated PACs, it begs the question as to what the public is expected to do with that information.

The Proposal discloses to the public the fact that an affiliated bank has a PAC. It does not get at the relevant analysis as to whether the broker-dealer is indirectly violating Rule G-37 by coordinating with that PAC. Indeed, by requiring broker-dealers to disclose the names of Affiliated PACs, it gives the false impression that those PACs are more closely aligned with the broker-dealer than they really are. Broker-dealers have made painstaking efforts to separate Affiliated PACs from themselves and their MFPs through various means, including informational barriers, to avoid even the appearance of an indirect violation. Disclosing an Affiliated PAC, however, would imply a nexus between the broker-dealer and the PAC that simply does not exist by only providing a small fraction of the total picture, i.e., whether the PAC belongs to an affiliated bank.

It is important to recognize that banks and bank holding companies engage in the political process for their own legitimate reasons, unrelated to municipal securities business. Banking is a heavily regulated industry, subject to a complicated web of federal, state, and local

legislation and regulation. As a result, it is vital for banks to be actively engaged in public discourse and the political process at all of these levels, including, but not limited to, making political contributions in accordance with federal, state, and local law. However, under the Proposal, even if there is an informational barrier and the bank's PAC makes a contribution to a state official solely in connection with its legislative or regulatory lobbying efforts, it will appear as though it was related to the broker-dealer's business, especially if the timing of the contribution happens to coincide with a transaction. Disclosing that PAC as an Affiliated PAC erroneously invites the public to make this unfounded leap.

The Proposal would undermine the best practice of implementing an informational barrier between broker-dealers and the Affiliated PACs. Existing MSRB guidance already addresses the issue of indirect contributions by suggesting that broker-dealers impose an informational barrier between the dealer and the Affiliated PACs.⁴ The MSRB further reaffirms this guidance in the Interpretations contained in the Notice. Under these informational barriers, the broker-dealer would not even know if the affiliated bank established a new state PAC. The Proposal, however, would require the broker-dealer to track the existence of the state PACs, and in turn, the states in which the bank is making contributions. This undermines the purposes of the informational barrier, which is to keep the broker-dealer unaware of the affiliated bank's political activities and to eliminate coordination between the broker-dealer and those PACs.

As noted in our comments to MSRB Notice 2009-51,⁵ the MSRB also lacks jurisdiction over PACs that are not controlled by municipal securities dealers.⁶ This is particularly the case when it comes to affiliated banks that are regulated under a separate statutory scheme and different agencies, such as the Office of the Comptroller of the Currency.

Conclusion

The MSRB should not require broker-dealers to disclose the names of Affiliated PACs given that it would create a false impression of linkage between the broker-dealer and the PACs, would be contrary to the best practice of establishing informational barriers, and is not within the MSRB's jurisdiction. Rather, the MSRB should focus on the relevant goal of preventing coordination between broker-dealers and such PACs. We believe that the MSRB's

⁴ See, e.g., Rule G-37 Question and Answer No. III.7 (September 22, 2005).

⁵ Letter from SIFMA to the MSRB re: MSRB Notice 2009-51 (October 30, 2009), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-51.aspx?c=1>.

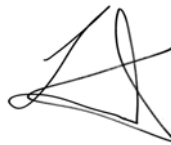
⁶ See, e.g., Section 15B of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*

prior guidance and its Interpretation on Affiliated PACs (contained in the current Notice) properly achieve this goal. However, to the extent the MSRB decides to require disclosure of the identities of Affiliated PACs, it should clearly define Affiliated PACs, as it did in the September 2009 notice, to affiliated bank and bank holding company PACs.

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We wish to thank the MSRB and its staff for their work in developing the Proposal and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposal. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130, or via email at lnorwood@sifma.org.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, stylized outline of a triangle.

Leslie M. Norwood
Managing Director and Associate General Counsel

cc: ***Securities Industry and Financial Markets Association***
Municipal Executive Committee
Municipal Policy Committee
Municipal Division Legal Advisory Committee
Committee on State and Local Business Relationships