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August 7, 2009

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

Re: MSRB's Proposed Changes to MSRB Rule G-37 and Request for Comments

Dear Ms. Carey:

This letter is being written to you in response to MSRB Notice 2009-35 (June 22, 2009) in which you requested comments on a proposed change to MSRB Rule G-37 that would require the disclosure of contributions of MFP's and dealers to bond ballot measures and seeks responses to certain questions about dealer contributions to bond ballot measures. Piper Jaffray & Co. is a national leader in underwriting and distributing bonds for state and local governments and has thought critically and carefully about this practice. Thank you for the opportunity to present our views and opinions on these matters.

Background

In general, we support disclosure to the MSRB of contributions to bond election committees. Typically, these contributions are already required to be disclosed within the particular state where they are made, and we have been advocates that these contributions also be disclosed in Official Statements for related bond issues. In certain states, contributions or services to bond election committees are commonplace. While different firms and individuals may vary in their views related to these contributions and services, we feel that it is important at the outset of this letter to state that we do not see practices that we consider abusive or evidence of "pay to play" or otherwise inappropriate. On the contrary, we believe that firms that provide contributions or bond election services typically do so in a thoughtful and measured manner.

Comments Related to Draft Amendment to G-37

As stated above, we support disclosure to the MSRB of contributions to bond election committees. This would assure that the Board can fully understand the practices of all firms in all parts of the country related to bond election contributions and make a thoughtful evaluation of their views related to these practices.

While we support disclosure of contributions by firms to bond election committees, we do not support the elements of the proposed rule that require disclosure of contributions by individual municipal finance professionals and executive officers. We are not aware that contributions by individuals are prevalent; indeed, individuals from our firm do not

generally make contributions. This element of the proposed rule pre-supposes that individuals either make contributions or will do so to circumvent disclosure to the MSRB even though our evidence suggests otherwise. Such contributions, if any, would likely be subject to state and local reporting requirements anyway. As members of the Board are aware, it is already time consuming and expensive to do the compliance work to track political contributions to candidates under G-37 and we hope that the Board can come to an understanding of practices related to bond election contributions by individuals without imposing this new burden.

We prefer that the Board incorporate rules related to bond election contributions into a new rule rather than existing Rule G-37. We believe amending G-37 to include bond election contributions draws a parallel between contributions to political candidates and bond election committees. We believe that these two types of contributions are very different in a number of important ways and as such should be treated separately under any proposed MSRB rules.

Background Information Related to Bond Election Contribution Practices

In our experience, bond election contributions are most common in connection with school districts and community colleges. There are other types of issuer clients who also have bond elections where bond election contributions may be solicited on occasion, but school districts are the most frequent simply because laws require the vast majority of their debt to be approved at election by voters. Other types of issuers may be able to issue debt that does not require a bond election for most of their debt needs.

Laws and practices in this area vary by state. While bond elections are required for school and community college debt in most states and there are many similarities in the laws related to this from state to state, there are also some important differences. Practices have developed differently in different states for various reasons that include such factors as: costs to run campaigns, election percentages required to pass bond measures, the dates on which bond elections are required to be conducted, the use of election strategists by campaign committees and other factors.

While we conduct school bond business in many states, there are two states where we are frequently asked to contribute or provide services to bond elections: Colorado and California. The practice in these two states is very different and this difference points out some of the complexities of this issue. In California, due in part to the expense of bond campaigns and the frequent usage by campaign committees of election strategy consultants, we are frequently asked to make cash contributions to the bond election committees in instances where we have been hired by the school district as their bond underwriter.

In Colorado, the primary bond underwriting firms that work on election-driven debt have developed capabilities to provide election services for clients. These services may be provided by staff of the underwriting firm or by outside firms who are specialists in election services and retained by the underwriting firms on a continuing basis to provide this expertise to clients. These services include help with developing an election strategy, key messages, development of campaign materials and assistance in conducting meetings to sell the key messages. These "in-kind" services may be required to be reported as such under state law. In most other states where we conduct business, we are asked only on infrequent occasions to provide contributions or services to bond election committees.

Bond Election Committees

The process of conducting bond elections has similarities in all states. School boards or other boards of elected officials first make a determination to place a bond measure on the ballot. In almost all states, no public funds are allowed to be used to "advocate" for the passage of the bond measure. As a result, independent bond election committees are formed that are separate from the school district for the purpose of advocating for and promoting passage of the bond measure. These committees need to raise funds to conduct their campaign. Fundraising is done in the community but it is challenging in many communities for these committees to raise sufficient funds without some assistance. For example, home builders are entities that frequently contribute to campaigns due to their interest in having strong schools in the community.

The primary expenses for bond election committees include: hiring of election strategy consultants, printing and distributing election advocacy materials, surveys and polling of voters and media expenses. The expenses of campaigns will vary widely based on the size of the voter base, the resources required in that particular community to pass a bond measure and the percentage of voters necessary to pass a bond measure. For example, California requires a super-majority of 55%.

Overview of Piper's Policies and Practices Related to Bond Election Contributions

At Piper, we have reviewed the various issues related to bond election contributions and services over a number of years and have developed our own points of view and policies related to these matters. We consider that these contributions and services, like certain other items such as entertainment and various client sponsorships, have the potential for presenting a conflict of interest. Our policies related to them are designed to assure that we are appropriately addressing any such potential conflict.

In connection with direct contributions to bond election committees, our policy requires that we have already been selected by an issuer before we will consider a contribution. In connection with each request that we consider, we ask our public finance bankers to certify that they have not made any representations or commitments in the hiring process related to our willingness to make a contribution. We place limitations on the amount of any contribution that we will make. We have both a dollar amount cap as well as a cap related to the percentage of the campaign budget. We ensure that these contributions are disclosed at the state for each ballot measure as may be required, and we endeavor to request disclosure of our contribution in bond offering documents. We also disclose our policies and practices on our public website at http://www.piperjaffray.com/2col_largeright.aspx?id=1293.

In Colorado, we may provide election services within the limitations set forth under the laws of that state to certain clients who request this. Our policy related to this service requires disclosure to the state as an in-kind contribution as well as a request for disclosure in offering documents.

We also receive requests on occasion and sometimes make contributions in support of clients related to certain ballot measures that do not involve bond issuances. Often these ballot measures are for these various types of operating levies. These requests are considered on a case-by-case basis.

Comments Related to Matters Requested by the MSRB

The request for comments solicited feedback on a variety of specific matters related to bond election contributions. Below is a brief commentary:

Prevalence and Market Segments for Contributions – We have noted above that contributions are mostly related to school financing and in our practice are most prevalent in California in the form of direct contributions and in Colorado in the form of in-kind services to bond election committees. In addition, there are occasional requests related to larger city or state level clients on larger bond measures.

Nexus of Contributions to Selection of Bond Underwriters – We are not aware of a direct nexus between contributions to bond election committees and the underwriting selection process in California. In our description of our policies above, we make it clear that we do not permit a direct nexus. Further, we do not see other firms who are making or promising bond election contributions as part of their strategy to win business. That said, we believe that many underwriters in California do make bond election contributions in the ordinary course of business.

We do not believe that bond election contribution policies have been a meaningful determinant in the selection process for bond underwriters in the school district area in California. School districts are highly local entities and we believe that the primary determinants in the awarding of school business have included bankers' knowledge of these clients and the issues that are important to them (which requires experience in school district finance and a willingness to travel frequently to visit clients) along with proven experience in delivering strong execution on prior school district transactions.

In Colorado, we have seen a more direct connection between the underwriting selection processes and the ability of dealers to provide bond election services insofar as these services are often discussed in the selection processes for clients whose bond issues require voter approval. For certain clients, it would be difficult to be hired for underwriting services without being able to assist with bond election services.

Timing and Process for Requests of Contributions – Our experience in California is that bond election contributions are usually requested in the months leading up to the bond election as the campaign is being conducted. The contribution requests are typically made by a member of the election campaign committee, often in the form of a phone call followed up by a request letter. We are occasionally, but not typically, contacted by a staff person at the issuer informing us that the campaign committee will be making a request. We do not see contribution requests made in requests for proposals. On occasion we are asked as part of the selection process to describe our policy related to bond election contributions. We respond by summarizing our policy related to this matter and stating that we cannot make any commitment as part of the selection process as to our willingness to make a contribution.

Cash Versus In-Kind Contributions – We have noted that the practices in California and Colorado and for certain firms are different with regard to direct contributions versus in-kind services. We believe that the disclosure requirements should be the same for each of these items. We are willing in Colorado to describe the availability of bond election services to clients as part of the selection process. We do not believe that it is appropriate to make or discuss a cash contribution prior to being selected as an underwriter, however.

Important Considerations on Whether a Rule Change to Ban of Bond Election Contributions is Warranted

As stated above, we support disclosure to the MSRB of dealer's bond election contributions. However, although we support sound and fair practices in the municipal finance industry, we believe that it would be premature for the MSRB to consider a rule change banning these contributions. As the MSRB evaluates this matter, we believe the following considerations should be taken into account:

<u>Difference Between Political Contributions and Bond Election Contributions</u> – We are concerned about including bond election contributions within the scope of Rule G-37 because of the parallel this implies between contributions to bond ballot measures and political campaigns. These are different in two ways. First, political contributions benefit particular individuals in a personal quest who, if successful in the election, are in a position of decision-making power in the selection of bond underwriters and may be tempted to exploit their powers to appoint lucrative contracts in exchange for contributions. This distorts the incentives and motivations of public officials, i.e., to select the best vendors to perform services to serve the public's interest. This personal dynamic is not at play in dealer contributions to bond election campaigns. Secondly, a contribution to a bond election committee advocates and benefits a public purpose previously authorized by the publically elected officials of a governing body of an issuer and is intended to benefit all of the citizens of that jurisdiction. Bond election contributions are more akin to charitable contributions because they benefit a legitimate public purpose rather than an individual.

<u>Bond Election Contributions Benefit Clients</u> – Direct contributions and bond election services are provided because there is a genuine need by issuer clients to pass bond elections in order to enact policy decisions. The views of issuers who have pressing bond issuance needs should be carefully considered as part of a process to determine if rules should be enacted to eliminate or limit these contributions. In our discussions of the complexities surrounding these issues, we have found that many issuer clients have strong views supportive of bond election contributions and election services. If as a regulated industry we feel differently, it is important that we first reconcile the reasons for these views with the perspectives of the issuer clients that we serve.

<u>Regulation Can be Done at the Local Level</u> – Every state has local preferences, laws and rules that regulate bond elections. Some states, such as Missouri, have laws in place that do not allow various interested parties (which includes bond underwriters) to contribute to bond elections or to provide various in-kind services. In other states these matters have been discussed and debated at some length, after which legislatures have intentionally declined to restrict these contributions. The MSRB should give serious consideration to whether the facts and circumstances surrounding contributions to bond election committees warrant an industry action at the federal level (beyond disclosure) or whether it is best to allow this matter to be regulated on a state or local level.

<u>Assuring Consistency in Rule Applicability</u> – In states like California where bond election contributions are permitted and often made, bond underwriters are one among several entities that provide contributions including developers, homebuilders, architects, bond attorneys, financial advisors and others. As there are various debates within the industry about the regulation of financial advisors, we would not like to see a situation develop that creates another area of inconsistency in rules applicable to dealers vs. non-dealers. We have commented on these types of concerns in the past in connection with MSRB Rule G-23 and

believe that some of these same issues are a consideration in connection with any proposal related to bond election contributions.

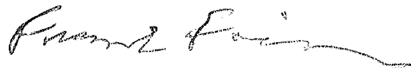
Issue Should be Considered as Part of a Broader Conflict of Interest Review – For all of the various reasons that we have mentioned, we ultimately view bond election contributions as an issue that has the potential for a conflict of interest if not managed properly. The conflict regards whether the contributions or the potential for contributions or services influences underwriter (or financial advisor) selection in a manner that is not fair or appropriate or does not properly serve investor interests.

A rule to eliminate or ban these contributions should be considered as part of a broader discussion of a variety of potential conflicts of interest with similar characteristics. For example, the "tying of credit" to underwriting services, i.e., the perception by issuers and borrowers respecting the availability of liquidity support for bonds and its impact on underwriter selection processes is a much more prevalent potential conflict and of much more immediate concern to the industry than bond election contributions.

Conclusion

Piper Jaffray supports changes to MSRB rules that would require disclosure by firms, but not individuals, to bond ballot measures. For the reasons discussed above, we believe such a rule change should be effected outside of Rule G-37, and we do not support a ban on this practice at this time. We appreciate the opportunity to comment on the proposed changes to Rule G-37 and we would be happy to have additional dialog or to respond to further questions that may arise.

Sincerely,



Frank Fairman
Managing Director
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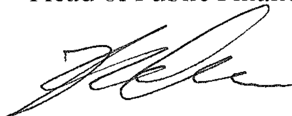

Rebecca Lawrence
Assistant General Counsel