



REGIONAL
BOND DEALERS
ASSOCIATION

500 New Jersey Ave., NW
Sixth Floor
Washington, DC 20001
202-509-9515

August 7, 2009

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

Dear Ms. Carey,

The Regional Bond Dealers Association (“RBDA”) is pleased to submit comments on the Municipal Securities Rulemaking Board’s (“MSRB’s”) Notice 2009-35, “Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions” (the “Notice”). The RBDA is the organization representing regional securities dealers active in the U.S. fixed-income markets.

As the MSRB notes in its Notice, municipal securities dealers from time to time make contributions to bond ballot campaigns in keeping with their role of assisting municipal bond issuers in bringing securities to market. The RBDA supports transparency with respect to contributions made by municipal securities dealers to bond ballot campaigns. We believe that transparency with regard to bond ballot campaign contributions helps voters, investors, regulators and market observers gauge the relationships among dealers, issuers and citizen campaign committees and helps avoid the appearance of “pay-to-play.” We also believe that contributions to bond ballot campaigns differ fundamentally from the types of political campaign contributions currently covered in the MSRB’s Rule G-37. Contributions to bond ballot campaigns that are undertaken in compliance with state and local laws and regulations are appropriate and generally do not constitute pay-to-play. Moreover, we believe transparency with regard to contributions to bond ballot campaigns has already been achieved through state-sponsored reporting rules and systems. An MSRB-sponsored disclosure regime for contributions to bond ballot campaigns would be duplicative and superfluous. For those reasons, we do not believe the draft amendment to Rule G-37 included in the Notice is warranted at this time.

The nature of contributions to bond ballot campaigns

Contributions to bond ballot campaigns differ from contributions to political election campaigns in several fundamental ways.

Contributions to bond ballot campaigns almost always take place after an underwriter has been selected. Before Rule G-37 was put in place, there was a concern that candidates for political

office might seek contributions from potential bond underwriters with the understanding that if the candidate won the election, he or she would attempt to ensure that the contributing underwriter was chosen to underwrite bonds for that jurisdiction. By contrast, in regard to bond ballot campaigns, it is often the case that contributions do not take place until after an underwriter has been selected. While an issuer may consider a firm's expertise in assisting with bond ballot campaigns as a factor in choosing an underwriter, it is one of many factors in determining a firm's qualification to bring bonds to market. We are not aware of circumstances where dealers have committed to contributing to bond ballot campaigns in advance of being chosen to underwrite bond issues.

Providing assistance to issuers with regard to bond ballot campaigns is a service that is affiliated with bringing bonds to market. This is not the case for contributions to campaigns for political office. In cases of bonds subject to voter approval, without a successful ballot campaign, bonds cannot be sold. In this regard, contributing to bond ballot campaigns is comparable to other services provided by underwriters in negotiated bond sales such as helping to size an issue, structure repayment schedules, coordinate with rating agencies, compile documentation, seek credit enhancement, determine the timing of a sale and a long menu of other services necessary to bring bonds to market. Contributions to bond ballot campaigns are also comparable to advice, expertise and services many underwriters provide to issuers in seeking the approval of legislative or governing bodies for prospective bond issues. Contributions to campaigns for political office are not analogous.

Contributions to bond ballot campaigns do not advance the positions of individual politicians. Contributions made to the campaigns of candidates for political office covered by Rule G-37 by their nature inure to the benefit of individual politicians. In that regard, contributions to campaigns for political office suggest an element of pay-to-play that does not exist for contributions to bond ballot campaigns, where no individual politician benefits directly from the outcome of the ballot election.

This characterization of contributions to bond ballot campaigns is supported in judicial review. For example, in a recent decision in a Colorado state law case related to a ban on certain political contributions, the Colorado District Court recognized that "contributions to ballot measures are treated differently than contributions to candidates because the 'risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue.'"¹

Disclosure of contributions to bond ballot campaigns is often covered under state election laws

Many states where dealer contributions to bond ballot campaigns are common have in place their own laws and rules governing the disclosure of ballot campaign contributions. While these systems generally do not link contributions with individual bond issues, they do provide a means for voters, public officials and market participants to track the flow of bond ballot campaign

¹ District Court, County of Denver, Colorado. *Kerrie Dallman et al. v. William Ritter and Rich L. Gonzales and Daniel Ritchie et al. v. Bill Ritter and Rich Gonzales*. Case No. 09CV1188 consolidated with 09CV1200. "Findings of Fact, Conclusions of Law and Order Entering Preliminary Injunction." Page 19.

contributions. A new MSRB rule and system governing disclosure of bond ballot campaign contributions would be duplicative and superfluous with respect to existing state systems.

Moreover, the draft rule amendments included in the Notice would require dealers to include in their disclosures the value of in-kind services provided to bond ballot campaign initiatives. It would be extraordinarily difficult in many cases for dealers to segregate in-kind services for bond ballot campaigns from other services provided in the context of underwriting bond issues and to value those services accurately. This aspect of the draft rule amendment also raises the question of whether the value of services dealers provide for assistance with other forms of political approval of state and local bond issues should be disclosed. For example, should Rule G-37 be amended to require disclosure of the value of in-kind services provided by an underwriter to an issuer in seeking not voter approval but the approval of a political, legislative or governing body of a prospective bond issue? These complicating factors argue against the draft rule amendment included in the Notice.

The “perception” of pay-to-play should not drive rulemaking

In the Notice, the MSRB notes that “the perception that pay-to-play practices in this area may affect the integrity of the municipal securities market.” While we believe it is important for the MSRB to be sensitive towards negative municipal market perceptions, we do not believe negative market perceptions should drive new rulemaking. As far as we know, neither the MSRB nor other regulators or market observers have documented actual cases where contributions to bond ballot campaigns had the influence of pay-to-play in determining which dealer was awarded underwriting business. Moreover, for the points cited above regarding the distinction between contributions to bond ballot campaigns and political campaigns covered under Rule G-37, we do not believe contributions to bond ballot campaigns generally result in even the perception of pay-to-play.

Summary

Contributions to bond ballot campaigns differ fundamentally from contributions to campaigns for political office. We do not believe that contributions to bond ballot campaigns in general constitute pay-to-play in perception or reality. In addition, there are already in place state systems for reporting bond ballot campaign contributions that provide transparency to voters and market participants. For these reasons, we do not believe the MSRB’s draft amendment to Rule G-37 included in the Notice is warranted at this time.

Thank you for the opportunity to present our views. Please do not hesitate to contact us if you have any questions.

Sincerely,

/s/

Michael Decker
Co-Chief Executive Officer

/s/

Mike Nicholas
Co-Chief Executive Officer