



October 30, 2009

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

Re: MSRB Notice 2009-51: Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bank and Bank Holding Company Political Action Committee Contributions

Dear Ms. Carey:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to respond to Notice 2009-51<sup>2</sup> issued by the Municipal Securities Rulemaking Board (“MSRB”) (the “Notice”) in which the MSRB requests comment on its proposed draft amendments to Rule G-37 that would require the mandatory disclosure of dealer-affiliated bank and bank holding company political action committee (“PAC”) contributions to issuer officials, even if the PAC is not controlled by a dealer or municipal finance professional (“MFP”). It is of utmost importance to the municipal securities broker dealer community to continue its efforts to eliminate even the slightest perception of impropriety that may exist regarding its obtaining or retaining of municipal securities business. SIFMA and its members have long supported “pay to play” disclosure and related restrictions. We have supported and will continue to support reasonable regulations that help address pay-to-play, real or perceived. However, we see two impediments to implementing the MSRB’s changes to Rule G-37 in the Notice:

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<sup>1</sup> The Association, or “SIFMA,” brings together the shared interests of more than 650 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.

<sup>2</sup> MSRB Notice 2009-51 (September 16, 2009).

- The MSRB does not have statutory jurisdiction over PACs that are not controlled by municipal securities dealers, even if those PACs are controlled by bank holding companies affiliated with those dealers.
- PACs that would be covered by the proposed rule changes included in the Notice are not controlled by municipal securities dealers. Current rules and practices effectively prohibit many forms of interaction between municipal securities dealers and PACs that are controlled by affiliates that are not municipal securities dealers. The rule change proposed in the Notice runs counter to the intent of those rules and practices.

As a result of these factors, while SIFMA continues to support regulations designed to address pay-to-play, we feel the MSRB should not adopt the rule change included in the Notice.

#### Jurisdiction of the MSRB

In short, current MSRB Rule G-37 provides that a broker dealer may not engage in municipal securities business with an issuer if there have been any contributions made to an issuer official within the past two years by the firm, by any MFP associated with the firm, or a political action committee controlled by the firm.<sup>3</sup>

The definition of persons and entities covered by the MSRB is addressed in part by Section 15B of the Securities Exchange Act of 1934,<sup>4</sup> in which the Securities and Exchange Commission was required to establish the Municipal Securities Rulemaking Board to “propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers.” In the statute, the definition of “municipal securities dealer” was limited to the department or division of a bank that is engaged in the business of buying or selling municipal securities, but not the bank itself, if there was a separately identifiable department or division. Even more remote from the MSRB’s jurisdiction over entire banks and bank holding companies is their authority to require disclosure from bank and bank holding company PACs that are not controlled by the dealer or an MFP. For these reasons, SIFMA feels that the MSRB should not adopt this rule proposal because it lacks jurisdiction over banks and bank holding companies, as well as their non-dealer or non-MFP controlled PACs.

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<sup>3</sup> There is a *de minimis* exception for contributions that are not in excess of \$250 by any municipal finance professional to each issuer official, per election, for whom the municipal finance professional is entitled to vote.

<sup>4</sup> 15 U.S.C. § 78a *et seq.*

### Analysis of Benefits and Burdens

Banks and bank holding companies do have legitimate business interests and concerns regarding which the companies may make legitimate political contributions that are unrelated to the obtaining or retaining of municipal securities business, as their employees are independent of the municipal securities business. Also, as noted in the Notice, Rule G-37(d) specifically prohibits dealers and MFPs from using conduits, including PACs, to contribute indirectly to an issuer official if they could not do so directly. We feel the rules as currently written clearly ban any indirect contributions that could not be made directly, and therefore support the vigorous enforcement of the rules as written. The proposed amendments in the Notice merely create an additional compliance burden for broker dealers without an actual additional benefit.

Most significantly, it is problematic that the proposed amendments would mandate broker dealers solicit information on political contributions from a non-dealer controlled PAC. G-37 Q&A III.7 includes a discussion of written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties and non-dealer controlled PACs to contribute indirectly to an official of an issuer. In this Q&A, the MSRB states each dealer: “to ensure compliance with Rule G-37(d) in connection with contributions by dealers or MFPs to non-controlled (but affiliated) PACs, the dealer might adopt information barriers between any affiliated PACs and the dealer or its MFPs. Examples of such information barrier provisions might include such things as: ... a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions...” The proposed rule change directly contradicts the written supervisory procedures that the MSRB has stated in this Q&A should be in place. SIFMA believes that, pursuant to Q&A G-37 III.7, all broker dealers that have related bank and bank holding company PACs have established information barriers between the dealer and non-dealer controlled bank and bank holding company PACs. These policies and procedures were established to comply with Rule G-37(d), Q&A G-37 III.7 and for the purpose of eliminating any perception of impropriety between the broker dealer and the non-dealer controlled PAC.

There cannot be a nexus between obtaining or retaining municipal securities business and a bank or bank holding company PAC contribution if the information walls as directed by Q&A G-37 III.7 continue to exist, as the bank PAC would not know what issuer clients the broker dealer is trying to obtain business from and, likewise, the broker dealer could not use any bank PAC contributions to its advantage if it was not aware of any such contributions. Asking broker dealers to disclose contributions made from such bank and bank holding company PACs would mean that they would need to pierce the current information barriers and learn if there were any contributions. This rule proposal would mandate the sharing of information over information walls, and would likely result in the opposite of its intent by increasing the possibility of violations of Rule G-37(d). Again, in sum, this rule proposal would require broker dealers to violate policies and procedures that have set up information barriers between broker dealers and

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bank and bank holding company PACs precisely to ensure indirect violations of Rule G-37 do not occur, and thus we feel that this rule proposal would actually be detrimental to the perception of the market and the protections of the policies and procedures broker dealers have set up to aid in compliance with Rule G-37(d).

Conclusion

We appreciate this opportunity to comment on this proposed rule change. Again, SIFMA and its members have been supportive of the MSRB's efforts on transparency and elimination of the perception of "pay to play", but we do have concerns that this rule change will have the opposite effect of its intent. We would appreciate working with the MSRB on alternate proposals that would promote our mutual goals of transparency and elimination of the perception of "pay to play". If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at [lnorwood@sifma.org](mailto:lnorwood@sifma.org).

Respectfully,

A handwritten signature in black ink, appearing to be "L. Norwood", written in a cursive style.

Leslie M. Norwood,  
Managing Director  
and Associate General Counsel

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