OMB APPROVAL	
OMB Number:	3235-0045
Expires:	August 31, 2011
Estimated average burden hours per response	38

Page 1 of 90

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 18
Amendment No.

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, and Rule G-8, on books and records, regarding disclosure of contributions to bond ballot campaigns.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Leslie Last Name: Carey
Title: Associate General Counsel
E-mail: lcarey@msrb.org
Telephone: (703) 797-6600 Fax: (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/04/2009

By Ronald W. Smith
(Name)

Corporate Secretary
(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change consisting of amendments to Rule G-37 (political contributions and prohibitions on municipal securities business) and Rule G-8 (books and records to be made by brokers, dealers and municipal securities dealers). The MSRB requests that the proposed rule change become effective on, and would apply solely to contributions made on or after, the first business Monday at least five business days after SEC approval. The text of the proposed rule change is set forth below:[1]

Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business

(a)-(d) No change.

(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) No change.

(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:

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[1] Underlining indicates additions; brackets indicate deletions. Revisions to Form G-37 are indicated in Exhibit 3. The text of the proposed rule change will be available on the MSRB website at www.msrb.org/msrb1/sec.asp.

(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) [(B)] No change.

(D) [(C)] No change.

(E) [(D)] No change.

(F) [(E)] No change.

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) [(C)]** of paragraph (e)(i) for such calendar quarter; or

(B) No change.

(iii)-(iv) No change.

(f) No change.

(g) Definitions.

(i)-(ix) No change.

(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.

Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep

current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)-(xv) No change.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37*. Records reflecting:

(A)-(G) No change.

(H) the contributions, direct or indirect, to bond ballot campaigns made by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, and (iii) the amounts and dates of such contributions;

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, and (iii) the amounts and dates of such contributions; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) [(H)] No change.

(K) [(I)] No change.

(L) [(J)] No change.

(M) [(K)] No change.

(xvii)-(xxiii) No change.

(b)-(g) No change.

* * * * * * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its October 15-16, 2009 meeting. Questions concerning this filing may be directed to Leslie Carey, Associate General Counsel, at (703) 797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-37, on political contributions and prohibitions on municipal securities business, in effect since 1994, has provided substantial benefits to the industry and the investing public by greatly reducing the direct connection between political contributions given to issuer officials and the awarding of municipal securities business[2] to brokers, dealers and municipal securities dealers ("dealers"), thereby effectively assisting with eliminating pay-to-play practices in the new issue municipal securities market. The rule prohibits dealers from engaging in municipal securities business with an issuer within two years after certain contributions to an official of such issuer are made by the dealer, any municipal finance professional ("MFP")[3]

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[2] Municipal securities business is defined in Rule G-37(g)(vii) as: (A) the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis (*e.g.*, a negotiated underwriting); (B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (*e.g.*, a private placement); (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.

[3] Municipal finance professional is defined in Rule G-37(g)(iv) as: (A) any associated person primarily engaged in municipal securities representative activities (exclusive of sales activities with natural persons); (B) any associated person (including but not limited to any affiliated person of the 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 (A) or (B) above; (D) any associated person who is a supervisor of any

(continued . . .)

associated with such dealer (other than certain permitted *de minimis* contributions)[4] or any political action committees ("PACs") controlled by the dealer or any MFP. In addition, the rule prohibits the solicitation or coordination by the dealer and certain MFPs of contributions to officials of issuers with which such dealer is engaging in or seeking to engage in municipal securities business, as well as of payments to political parties of states or localities where the dealer is engaging in or seeking to engage in municipal securities business. Finally, the rule also requires dealers to disclose publicly on Form G-37[5] non-*de minimis* contributions to issuer officials and payments to political parties of states and political subdivisions made by dealers, MFPs, their PACs and non-MFP executive officers.[6] Rule G-8, on books and records, requires dealers to create records of such Rule G-37 contributions and payments.

Currently, Rule G-37 does not apply to contributions that are made to bond ballot campaign committees by dealers, MFPs or their PACs. Bond ballot campaigns typically occur as a result of a state or local government placing a ballot measure before voters to approve specified municipal borrowing. Many state and local jurisdictions are required to authorize the issuance of municipal bonds through voter approval to fund municipal finance projects. Typical bond ballot measures include financings for school districts, transportation and other municipal projects. Some industry participants have expressed concerns about the opportunity for abuses associated with the awarding of municipal securities business as a result of dealer contributions to bond ballot campaigns. After consideration of industry comments and a review of the

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(. . . continued)

person described in (C) above up through and including, in the case of a 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; or (E) any associated person who is a member of the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank) executive or management committee or similarly situated officials, if any.

4 Contributions made by MFPs to issuer officials for whom such MFP is entitled to vote will not result in a ban on municipal securities business if such contributions, in total, do not exceed $250 per election.

5 The Form G-37 is submitted by dealers through the existing MSRB Political Contribution Submission Service, which is the current system that accepts the submissions of Form G-37. Submitted Forms G-37 are made publicly available through the MSRB website.

6 Non-MFP executive officer is defined in Rule G-37(g)(v) as 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 dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank), but does not include any MFP. Although Rule G-37 requires disclosure of non-MFP executive officer contributions, such contributions do not result in a ban on municipal securities business.

accessibility to the public of information about contributions made to bond ballot campaigns, the MSRB has determined that establishing requirements regarding disclosures of such contributions would be appropriate and in the best interests of investors and the municipal securities market.

The proposed amendments to Rule G-37 would require the public disclosure of contributions to bond ballot campaigns made by dealers, MFPs, their PACs and non-MFP executive officers on MSRB Form G-37. Dealers would be required to report on revised Form G-37 the official name of each bond ballot campaign receiving contributions during such calendar quarter, the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, the contribution amount made and the category of contributor. The proposal would provide a *de minimis* exception from the reporting of contributions on Form G-37 made by an MFP or 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. The amendments would parallel the existing disclosure requirements for contributions to issuer officials and state and local political parties. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot campaigns.

The proposed amendments to Rule G-8 would require dealers to create and maintain records of the non-*de minimis* contributions to bond ballot campaigns that would be required to be disclosed on Form G-37 under the proposed amendments to Rule G-37.

(b) The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will protect investors and the public interest and will assist with preventing fraudulent and manipulative acts and practices by allowing the public and regulators to monitor dealer contributions to bond ballot campaigns, thereby further reducing the opportunity for pay-to-play practices in the municipal securities market.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

The MSRB requested comment on draft amendments to Rule G-37[7] and received seven comment letters.[8] Three of the seven commentators were generally supportive of the proposed change, with certain exceptions detailed below.[9] Two of the seven commentators were against the proposed change.[10] Two other commentators did not express an opinion regarding whether they supported the proposed change.[11] The MSRB addresses the comments below.

General. Morgan Stanley supported the proposed change but requested that the MSRB consider having bond ballot campaign contributions result in a ban on municipal securities business. SIFMA also supported the proposed change and noted that "there are no uniform disclosure methodologies or transparency vehicles for bond ballot measure campaign contributions across the various state and local jurisdictions that may have bond ballot measures." SIFMA further stated "the transparency this rule change will create would reap benefits that outweigh any additional compliance burdens and costs for the municipal securities dealer community."

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7 *See* MSRB Notice 2009-35 (June 22, 2009).

8 *See* letters from Robert J. Stracks, Counsel, BMO Capital Markets ("BMO") to Leslie Carey, dated August 7, 2009; Robert K. Dalton, Vice Chairman, George K. Baum & Company ("Baum") to Leslie Carey, dated July 30, 2009, along with supplemental letter from Kent J. Lund, Executive Vice-President, Chief Compliance Officer to Leslie Carey, dated August 7, 2009; Stratford Shields, Managing Director, Morgan Stanley ("Morgan Stanley") to Leslie Carey, dated July 30, 2009; Frank Fairman, Managing Director and Rebecca Lawrence, Assistant General Counsel, Piper Jaffray ("Piper") to Leslie Carey, dated August 7, 2009; Michael Decker, Co-Chief Executive Officer and Mike Nichols, Co-Chief Executive Officer, Regional Bond Dealers Association ("RBDA") to Leslie Carey, dated August 7, 2009; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Leslie Carey, dated August 7, 2009; and Kenneth E. Williams, President, Chief Executive Officer, Stone & Youngberg ("Stone & Youngberg") to Leslie Carey dated August 13, 2009.

9 *See* letters from Morgan Stanley, Piper and SIFMA.

10 *See* letters from Baum and RDBA.

11 *See* letters from BMO and Stone & Youngberg.

Piper supported the disclosure of contributions to bond ballot campaigns but not those by individual MFPs and executive officers. Piper noted it is not aware that contributions to bond ballot measures by individuals are prevalent and stated that such contributions are likely subject to state and local reporting requirements. Stone & Youngberg stated that the proposed change may seem a way "to keep in check the appearance of impropriety in the municipal marketplace" but that, unless the MSRB requires disclosures or bans with respect to all contributions of time or money that are given by any employee at banks and dealer firms to entities that issue municipal bonds, the rules will continue to favor certain participants in the municipal finance business. BMO stated that it was not sure of the rationale for disclosure of dealer contributions to bond ballot campaigns.

After reviewing the comments, the MSRB is filing the proposed rule change to require the public disclosure of dealer contributions to bond ballot campaigns. The MSRB believes, as noted by SIFMA, that the proposed amendments would create a uniform disclosure regime to track and make available to public scrutiny bond ballot campaign contributions by dealers in the municipal securities market, thereby increasing available information to municipal securities market participants and the general public. The MSRB does not believe that a ban on municipal securities business as a result of a contribution to a bond ballot campaign is warranted at this time but notes that the disclosures provided for under the proposed rule change will assist in determining, in the future, whether it would be appropriate to consider further action in this area.

The MSRB does not agree with Piper's comments that the proposed change should not require the disclosure of contributions by individual MFPs and executive officers since the MSRB does not believe that a satisfactory basis for providing different disclosure requirements for bond ballot contributions as compared to other political contributions or payments, as is currently required under Rule G-37, has been established. The MSRB notes that patterns and practices observed through the disclosures that would be required under the proposed rule change could serve as a basis for making such differentiation in connection with any further regulatory action in this area in the future, if appropriate.

In-Kind Contributions. SIFMA stated that the use of in-house resources should not be reported because the valuation of such services may be difficult to ascertain. BMO also noted that, if the proposed changes are approved, they "should either only require reporting of cash contributions or require much more general information as to in-kind services as opposed to cash contributions" because the requirement to value and report in-kind contributions is "fraught with impossible practical difficulties." The RBDA similarly stated, "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." Baum requested that in-kind services be treated differently from cash contributions because "measurement of in-kind contributions may represent a real challenge…."

The existing definition of contribution in Rule G-37 is not limited to cash payments and

generally would cover anything of value, including in-kind contributions.[12] The MSRB has determined not to amend the term contribution and dealers would be required to report such contributions to bond ballot campaigns just as they are currently required to report such non-cash contributions under Rule G-37 with respect to political contributions to issuer officials.[13] The MSRB believes the public disclosure of such contributions, including cash and in-kind services, will allow public scrutiny of such contributions and the potential connection between such contributions and the awarding of municipal securities business.

Constitutionality. Baum and the RBDA did not support the proposed change that would require disclosure of bond ballot campaign contributions and noted that such contributions do not have an element of pay-to-play that may exist for contributions to campaigns for political office because, for bond ballot measures, no individual politician benefits directly from the outcome of a bond ballot election. They also asserted that bond ballot campaign contributions are subject to strict scrutiny for possible violations of the First Amendment, citing Dallman et al. v. Ritter et al.[14]

Dallman concerned the constitutionality of an amendment to Colorado's constitution, passed by voter election in Colorado in November 2008, which prohibits contributions to promote or influence a bond ballot issue election by a person wishing to qualify for a sole source government contract relating to the ballot issue. Plaintiffs claimed that the amendment violated their First Amendment rights to free speech and association. The court stated that, "the part of Amendment 54 that bans those subject to it from contributing to ballot measure campaigns is

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12 Contribution is defined in Rule G-37(g) as 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.

13 The MSRB has previously provided guidance regarding the treatment of contributions as the use of dealer resources or the incurrence of expenses by dealers in connection with a political campaign. The MSRB has made clear that Rule G-37 does not prohibit or limit individuals from providing volunteer services in support of an issuer official so long as dealer resources were not used, and has also noted that certain incidental expenses incurred by such individual would generally not be treated as a contribution. *See* Rule G-37 Question and Answers II.18 (May 24, 1994) and II.19 (August 18, 1994). These principles would apply equally to individuals providing volunteer services in connection with a bond ballot campaign.

14 Findings of Fact, Conclusions of Law and Order Entering Preliminary Injunction issued in *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), (D. Colo. 2009) [hereinafter *Dallman*].

subject to strict scrutiny. A vote for or against a ballot measure is an exercise of free speech, and an economic contribution to a committee designed to support or oppose a ballot measure is similarly of constitutional magnitude."[15] The court then determined that the amendment to prohibit bond ballot measure contributions was not narrowly tailored to advance a compelling state interest and was unconstitutional.

The MSRB believes that the requirement to provide public disclosure of contributions to bond ballot campaigns does not hamper or interfere with an individual's ability to be involved with and/or support issues related to bond ballot campaigns. The MSRB does not believe the proposed rule change will impinge upon the First Amendment rights of individuals and/or firms that will be responsible for providing disclosure of bond ballot campaign contributions[16] because the proposed rule change would only require disclosure and would not prohibit contributions, as was at issue in Dallman. Disclosure obligations do not present the same constitutional issues as do direct or indirect prohibitions or limitations on contributions.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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15 Dallman, p. 19.

16 In Blount v. Securities and Exchange Commission, 61 F.3d 938, 948 (D.C. Cir. 1995), the District Court determined that existing Rule G-37 advanced a compelling governmental interest to protect investors that did not abridge First Amendment rights and stated that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views."

9. Exhibits

1. Federal Register Notice

2. Notice requesting comment and comment letters

3. Revised Form G-37

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2009-18)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Amendments to Rule G-37 (Political Contributions and Prohibitions on Municipal Securities Business) and Rule G-8 (Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 4, 2009, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of proposed amendments to Rule G-37 (political contributions and prohibitions on municipal securities business) and Rule G-8 (books and records to be made by brokers, dealers and municipal securities dealers). The MSRB requested that the proposed rule change become effective on, and would apply solely to contributions made on or after, the first business Monday at least five business days after Commission approval.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's web site at www.msrb.org/msrb1/sec.asp, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The proposed amendments to Rule G-37 would require the public disclosure of contributions to bond ballot campaigns made by dealers, MFPs, their PACs and non-MFP executive officers on MSRB Form G-37. Dealers would be required to report on revised Form G-37 the official name of each bond ballot campaign receiving contributions during such calendar quarter, the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, the contribution amount made and the category of contributor. The proposal would provide a *de minimis* exception from the reporting of contributions on Form G-37 made by an MFP or 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. The amendments would parallel the existing disclosure requirements for contributions to issuer officials

and state and local political parties. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot campaigns.

The proposed amendments to Rule G-8 would require dealers to create and maintain records of the non-*de minimis* contributions to bond ballot campaigns that would be required to be disclosed on Form G-37 under the proposed amendments to Rule G-37.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will protect investors and the public interest and will assist with preventing fraudulent and manipulative acts and practices by allowing the public and regulators to monitor dealer contributions to bond ballot campaigns, thereby further reducing the opportunity for pay-to-play practices in the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On June 22, 2009, the MSRB published a notice requesting comment on draft amendments to Rule G-37. [3] The MSRB received comments from seven commentators.[4] Three of the seven commentators were generally supportive of the proposed change, with certain exceptions detailed below.[5] Two of the seven commentators were against the

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3 *See* MSRB Notice 2009-35 (June 22, 2009).

4 *See* letters from Robert J. Stracks, Counsel, BMO Capital Markets ("BMO") to Leslie Carey, dated August 7, 2009; Robert K. Dalton, Vice Chairman, George K. Baum & Company ("Baum") to Leslie Carey, dated July 30, 2009, along with supplemental letter from Kent J. Lund, Executive Vice-President, Chief Compliance Officer to Leslie Carey, dated August 7, 2009; Stratford Shields, Managing Director, Morgan Stanley ("Morgan Stanley") to Leslie Carey, dated July 30, 2009; Frank Fairman, Managing Director and Rebecca Lawrence, Assistant General Counsel, Piper Jaffray ("Piper") to Leslie Carey, dated August 7, 2009; Michael Decker, Co-Chief Executive Officer and Mike Nichols, Co-Chief Executive Officer, Regional Bond Dealers Association ("RBDA") to Leslie Carey, dated August 7, 2009; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Leslie Carey, dated August 7, 2009; and Kenneth E. Williams, President, Chief Executive Officer, Stone & Youngberg ("Stone & Youngberg") to Leslie Carey dated August 13, 2009.

5 *See* letters from Morgan Stanley, Piper and SIFMA.

proposed change.[6] Two other commentators did not express an opinion regarding whether they supported the proposed change.[7]

General. Morgan Stanley supported the proposed change but requested that the MSRB consider having bond ballot campaign contributions result in a ban on municipal securities business. SIFMA also supported the proposed change and noted that "there are no uniform disclosure methodologies or transparency vehicles for bond ballot measure campaign contributions across the various state and local jurisdictions that may have bond ballot measures." SIFMA further stated "the transparency this rule change will create would reap benefits that outweigh any additional compliance burdens and costs for the municipal securities dealer community."

Piper supported the disclosure of contributions to bond election campaigns but not those by individual MFPs and executive officers. Piper noted it is not aware that contributions to bond ballot measures by individuals are prevalent and stated that such contributions are likely subject to state and local reporting requirements. Stone & Youngberg stated that the proposed change may seem a way "to keep in check the appearance of impropriety in the municipal marketplace" but that, unless the MSRB requires disclosures or bans with respect to all contributions of time or money that are given by any employee at banks and dealer firms to entities that issue municipal bonds, the rules will continue to favor certain participants in the municipal finance business. BMO stated that it was not sure of the rationale for disclosure of dealer contributions to bond ballot campaigns.

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6 *See* letters from Baum and RDBA.

7 *See* letters from BMO and Stone & Youngberg.

After reviewing the comments, the MSRB is filing the proposed rule change to require the public disclosure of dealer contributions to bond ballot campaigns. The MSRB believes, as noted by SIFMA, that the proposed rule change would create a uniform disclosure regime to track and make available to public scrutiny bond ballot campaign contributions by dealers in the municipal securities market, thereby increasing available information to municipal securities market participants and the general public. The MSRB does not believe that a ban on municipal securities business as a result of a contribution to a bond ballot campaign is warranted at this time but notes that the disclosures provided for under the proposed rule change will assist in determining, in the future, whether it would be appropriate to consider further action in this area.

The MSRB does not agree with Piper's comments that the proposed rule change should not require the disclosure of contributions by individual MFPs and executive officers since the MSRB does not believe that a satisfactory basis for providing different disclosure requirements for bond ballot contributions as compared to other political contributions or payments as is currently required under Rule G-37 has been established. The MSRB notes that patterns and practices observed through the disclosures that would be required under the proposed rule change could serve as a basis for making such differentiation in connection with any further regulatory action in this area in the future, if appropriate.

In-Kind Contributions. SIFMA stated that the use of in-house resources should not be reported because the valuation of such services may be difficult to ascertain. BMO also noted that, if the proposed amendments are approved, they "should either only require reporting of cash contributions or require much more general information as to in-

kind services as opposed to cash contributions" because the requirement to value and report in-kind contributions is "fraught with impossible practical difficulties." The RBDA similarly stated, "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." Baum requested that in-kind services be treated differently from cash contributions because "measurement of in-kind contributions may represent a real challenge…."

The existing definition of contribution in Rule G-37 is not limited to cash payments and generally would cover anything of value, including in-kind contributions.[8] The MSRB has determined not to amend the term contribution and dealers would be required to report such contributions to bond ballot campaigns just as they are currently required to report such non-cash contributions under Rule G-37 with respect to political contributions to issuer officials.[9] The MSRB believes the public disclosure of such contributions, including cash and in-kind services, will allow public scrutiny of such

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[8] Contribution is defined in Rule G-37(g) as 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.

[9] The MSRB has previously provided guidance regarding the treatment of contributions as the use of dealer resources or the incurrence of expenses by dealers in connection with a political campaign. The MSRB has made clear that Rule G-37 does not prohibit or limit individuals from providing volunteer services in support of an issuer official so long as dealer resources were not used, and has also noted that certain incidental expenses incurred by such individual would generally not be treated as a contribution. *See* Rule G-37 Question and Answers II.18 (May 24, 1994) and II.19 (August 18, 1994). These principles would apply equally to individuals providing volunteer services in connection with a bond ballot campaign.

contributions and the potential connection between such contributions and the awarding of municipal securities business.

Constitutionality. Baum and the RBDA did not support the proposed change that would require disclosure of bond ballot campaign contributions and noted that such contributions do not have an element of pay-to-play that may exist for contributions to campaigns for political office because, for bond ballot measures, no individual politician benefits directly from the outcome of a bond ballot election. They also asserted that bond ballot campaign contributions are subject to strict scrutiny for possible violations of the First Amendment, citing Dallman et al. v. Ritter et al.[10]

Dallman concerned the constitutionality of an amendment to Colorado's constitution, passed by voter election in Colorado in November 2008, which prohibits contributions to promote or influence a bond ballot issue election by a person wishing to qualify for a sole source government contract relating to the ballot issue. Plaintiffs claimed that the amendment violated their First Amendment rights to free speech and association. The court stated that, "the part of Amendment 54 that bans those subject to it from contributing to ballot measure campaigns is subject to strict scrutiny. A vote for or against a ballot measure is an exercise of free speech, and an economic contribution to a committee designed to support or oppose a ballot measure is similarly of constitutional magnitude."[11] The court then determined that the amendment to prohibit bond ballot

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10 Findings of Fact, Conclusions of Law and Order Entering Preliminary Injunction issued in *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), (D. Colo. 2009) [hereinafter *Dallman*].

11 Dallman, p. 19.

measure contributions was not narrowly tailored to advance a compelling state interest and was unconstitutional.

The MSRB believes that the requirement to provide public disclosure of contributions to bond ballot campaigns does not hamper or interfere with an individual's ability to be involved with and/or support issues related to bond ballot campaigns. The MSRB does not believe the proposed rule change will impinge upon the First Amendment rights of individuals and/or firms that will be responsible for providing disclosure of bond ballot measure contributions[12] because the proposed rule change would only require disclosure and would not prohibit contributions, as was at issue in Dallman. Disclosure obligations do not present the same constitutional issues as do direct or indirect prohibitions or limitations on contributions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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12 In Blount v. Securities and Exchange Commission, 61 F.3d 938, 948 (D.C. Cir. 1995), the District Court determined that existing Rule G-37 advanced a compelling governmental interest to protect investors that did not abridge First Amendment rights and stated that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views."

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2009-18 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://ww.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and

3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy
Secretary

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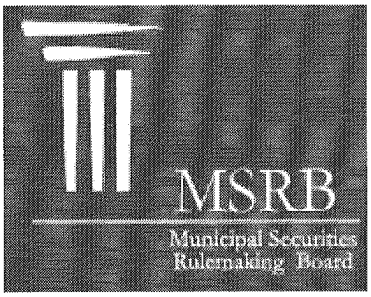
[13] 17 CFR 200.30-3(a)(12).

EXHIBIT 2



MSRB NOTICE 2009-35 (JUNE 22, 2009)

REQUEST FOR COMMENT: RULE G-37 ON POLITICAL CONTRIBUTIONS AND PROHIBITIONS ON MUNICIPAL SECURITIES BUSINESS – BOND BALLOT CAMPAIGN COMMITTEE CONTRIBUTIONS

Rule G-37, on political contributions and prohibitions on municipal securities business, of the Municipal Securities Rulemaking Board (the "MSRB") prohibits brokers, dealers and municipal securities dealers ("dealers") from engaging in municipal securities business with issuers if certain political contributions have been made. The MSRB believes the rule has provided substantial benefits to the industry and the investing public by greatly reducing the direct connection between political contributions given to issuer officials and the awarding of municipal securities business to dealers,[1] thereby effectively eliminating pay-to-play practices in the new issue municipal securities market.

The MSRB has received comments from municipal securities industry participants regarding contributions made by dealers, municipal finance professionals ("MFPs")[2] or their political action committees ("PACs") to bond ballot campaign

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[1] Rule G-37 defines municipal securities business as: (i) the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of any issuer; (iii) 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 (iv) 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.

[2] Rule G-37(g)(iv) defines municipal finance professional as: (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; (B) any associated person (including but not limited to any affiliated person of the 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 (A) or (B) above; (D) any associated person who is a supervisor of any person described in (C) above up through and including, in the case of a 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

committees that promote voter approval of bond measures. Some industry participants have raised concerns that contributions to such committees could assist dealers with obtaining municipal securities business and may raise the perception of pay-to-play practices. These industry participants have suggested that the MSRB consider amending Rule G-37 to cover such contributions. Other industry participants have argued, however, that such amendments to the rule are not necessary because contributions and other types of assistance[3] provided by dealers and MFPs are appropriate and lawful methods of assisting jurisdictions with receiving voter approval to finance vitally important municipal projects.

As a part of the MSRB's periodic review of the continued effectiveness of Rule G-37, the MSRB is considering these viewpoints and other comments from industry participants. To assist with these efforts, the MSRB is soliciting general comments from the industry and other interested parties on practices in connection with bond ballot campaign committee contributions. The MSRB is asking for comment on practices relating to bond ballot measures, including the awarding of municipal securities business to dealers based on dealer contributions to bond ballot campaign committees and the perception that pay-to-play practices in this area may affect the integrity of the municipal securities market. The MSRB is considering draft amendments to Rule G-37 that would require the mandatory public disclosure of bond ballot campaign committee contributions made by dealers, MFPs and their PACs on MSRB Form G-37. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot measures. The information gathered through the public disclosures contemplated in the draft amendments could serve as a basis for understanding whether the MSRB should consider further action with regard to bond ballot initiatives in the future.

BACKGROUND

Rule G-37 prohibits dealers from engaging in municipal securities business with an issuer within two years after certain contributions to an official of such issuer are

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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 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.

[3] Assistance for bond ballot measures includes in-kind services. In-kind contributions generally are treated as contributions within the meaning of Rule G-37(g)(i), although the MSRB has previously noted that personal service in connection with a campaign would not be treated as a contribution so long as dealer resources are not used in providing such service. *See* Rule G-37 Qs &As II.18 (May 24, 1994) and II.19 (August 18, 1994), available at http://www.msrb.org/msrb1/rulesQAG-372003.htm.

made by the dealer, any MFP associated with such dealer (other than certain permitted *de minimis* contributions)[4] or any PAC controlled by the dealer or any MFP. The rule requires dealers to disclose on Form G-37 non-*de minimis* contributions to issuer officials and payments to political parties of states and political subdivisions made by dealers, MFPs, their PACs and non-MFP executive officers.[5] The prohibition and disclosure requirements of the rule do not currently extend to contributions that are made to bond ballot campaign committees by dealers, MFPs or their PACs.

Bond ballot measure campaigns typically occur as a result of a state or local government placing a ballot measure before voters to approve specified municipal borrowing. Many state and local jurisdictions are required to authorize the issuance of municipal bonds through voter approval to fund municipal finance projects. Typical bond ballot measures include financings for school districts, transportation and other municipal projects.

The MSRB understands that contributions to bond ballot campaign committees by dealers and dealer personnel are generally given to support passage of bond ballot measures to authorize borrowing by a specific jurisdiction. Such contributions are subject to the rules and regulations of state and local finance laws, which vary from jurisdiction to jurisdiction.

REQUEST FOR COMMENT

The MSRB is requesting comment on whether contributions to bond ballot campaign committees have the potential to result in actual pay-to-play practices or the perception of pay-to-play practices, both of which can negatively affect the integrity of the municipal market. In addition, the MSRB wishes to understand whether dealer contributions to bond ballot campaign committees create issues similar to or different from those raised by contributions to political candidates. In particular, the MSRB seeks comment on:

- the prevalence of dealer contributions to bond ballot campaign committees;

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[4] Contributions made by MFPs to issuer officials for whom such MFP is entitled to vote will not result in a ban on municipal securities business if such contributions, in total, do not exceed $250 per election.

[5] Rule G-37(g)(v) defines non-MFP executive officer as 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 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 MFP. Although Rule G-37 requires disclosure of non-MFP executive officer contributions, such contributions do not result in a ban on municipal securities business.

- whether there is a nexus between contributions to bond ballot campaign committees for new bond issuances by specific dealers and the securing of roles by those dealers in the related bond underwriting;
- the circumstances under which such contributions have been made by dealers having roles in the related bond underwriting, including, but not limited to, the timing of such contributions in relation to key milestones in the bond authorization and underwriting processes;
- whether there are certain types of bond ballot measures that receive contributions from dealers more frequently than others;
- whether there are certain municipal finance market segments that have more contribution activity than others;
- how such contributions are used by campaign committees (e.g., for advertising purposes, etc.);
- whether in-kind contributions are frequently used and, if so, whether they should be treated differently from cash contributions; and
- whether dealers are solicited to make contributions by campaign committees or by issuers and, if so, how they are solicited (e.g., specifically requested in a request for proposals, etc.).

Based on the MSRB's review of information available through various states' political contribution disclosure facilities, the MSRB is concerned about the lack of effective transparency with regard to information on bond ballot campaign contributions currently available to the public. This lack of transparency arises due to disclosure requirements that vary from state to state and the difficulty of locating and extracting the relevant dealer-related and bond initiative-related information from the various public disclosure facilities. The MSRB is interested in receiving comments on the merits of requiring that dealers disclose such information in a centralized format to the MSRB through Form G-37 for public disclosure. Such disclosure would increase the amount of information available to market participants and thereby increase market transparency. The draft amendments, which are included at the end of this notice, would not provide for a ban on municipal securities business as a result of a contribution to a ballot campaign. However, such disclosures would assist the MSRB in assessing whether further action in this area would be appropriate in the future.

The MSRB is considering draft amendments that would require mandatory public disclosures regarding contributions to bond ballot campaigns that would parallel the existing disclosure requirements for non-*de minimis* contributions to issuer officials and state and local political parties. Thus, the dealer would be required to disclose, among other things,: (i) the official name of each bond ballot campaign, including the state or local jurisdiction by or for which such bonds would be issued; (ii) the contribution amount; and (iii) the contributor category (*i.e.*, dealer, MFP, PAC or non-MFP executive officer) for each contribution. The MSRB seeks comment on whether a dealer also should be required to disclose whether a specific item of municipal securities business it undertakes is related to a prior contribution to a bond ballot campaign. In addition, the MSRB seeks comment on whether a dealer should be required to identify the person from

whom they received a contribution request and the solicitation is not pursuant to a request for proposals or related documents.

* * * * *

Comments should be submitted no later than August 7, 2009 and may be directed to Leslie Carey, Associate General Counsel or Ronald W. Smith, Senior Legal Associate. Written comments will be available for public inspection on the MSRB's web site.[6]

June 22, 2009

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TEXT OF DRAFT AMENDMENT TO RULE G-37[7]

Rule G-37. Political Contributions and Prohibitions on Municipal Securities Business

(a)-(d) No change.

(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) No change.

(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 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 election) made by the persons and entities described in subclause (2) of this clause (B):

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6 All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make publicly available.

7 Underlining indicates new language; strikethrough denotes deletions.

(1) the official name of each bond ballot campaign and the jurisdiction (including city/county/state or political subdivision) by or for which such bonds, if approved, would be issued of each bond ballot campaign receiving contributions during such calendar quarter, 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)~~(B)~~ No change.

(D)~~(C)~~ No change.

(E)~~(D)~~ No change.

(F)~~(E)~~ No change.

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)** ~~(C)~~ of paragraph (e)(i) for such calendar quarter; or

(B) No change.

(iii) No change.

(f) No change.

(g) Definitions.

(i)-(ix) No change.

(x) The term "bond ballot campaign" means any fund, organization or committee that solicits or receives contributions[8] to be used to support initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.]

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8 Contributions are cash or in-kind services.

Alphabetical List of Comment Letters on MSRB Notice 2009-35 (June 22, 2009) Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions

1. BMO Capital Markets: Letter from Robert J. Stracks, Counsel, dated August 7, 2009
2. George K. Baum & Company: Letter from Robert K. Dalton, Vice Chairman, dated July 30, 2009; supplemental letter from Kent J. Lund, Executive Vice-President, Chief Compliance Officer, dated August 7, 2009.
3. Morgan Stanley: Letter from Stratford Shields, Managing Director, Head of Public Finance, dated July 30, 2009.
4. Piper Jaffray & Co: Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Assistant General Counsel, dated August 7, 2009.
5. Regional Bond Dealers Association: Letter from Michael Decker, Co-Chief Executive Officer, and Mike Nichols, Co-Chief Executive Officer, dated August 7, 2009.
6. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated August 7, 2009.
7. Stone & Youngberg: Letter from Kenneth E. Williams, President, Chief Executive Officer, dated August 13, 2009.

BMO Capital Markets

BMO Capital Markets GKST Inc.
300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606
312-441-2500

August 7, 2009

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

Re: MSRB Notice 2009-35 (June 22, 2009)--Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business--Bond Ballot Campaign Committee Contributions

Dear Ms. Carey:

We have reviewed the subject notice including the proposed change to Rule G-37. We are not sure we understand the rationale for disclosure of this particular type of activity. But even if such disclosure is desirable and useful, we believe that the requirement to value and report in-kind contributions is fraught with impossible practical difficulties.

A firm may be employed by a issuer to advise on laying the groundwork for a referendum. As the process moves forward, the firm may then be assisting the actual committee after formation. A distinction would have to be made as to what is reportable in that context as services to the committee as opposed to what is not reportable as services to the issuer. Also, the ability to value and keep track of time spent can be subject to wide swings of discretion. We can't imagine how the disclosure of the exact amount of time spent and the subjective value placed on that time can be of great usefulness in curbing pay-to-play practices. Therefore, we would recommend that if the conceptual basis for the proposed rule is approved, the rule as adopted should either only require reporting of cash contributions or require much more general information as to in-kind services as opposed to cash contributions.

We have not formulated a position on the other questions that you raise. However, we strongly believe that if the Board decides to adopt a rule covering more than what has been proposed, the Board should recirculate any such proposed rule for further comment.

Thanks you for the opportunity to comment.

Very truly yours,

Robert J. Stracks
Counsel

RJS/ays

George K. Baum & Company

INVESTMENT BANKERS SINCE 1928

July 30, 2009

Leslie Carey
Associate General Counsel
MSRB
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2009-35 (June 22, 2009)

Dear Ms. Carey:

In response to the MSRB's request for comment regarding bond ballot campaign committee contributions, George K. Baum & Company has prepared a thorough review of the areas of greatest interest to the MSRB. Our summary highlights the extensive contribution-related reporting that our firm already is responsible for meeting, the reality of when we make a contribution to a bond ballot campaign committee relative to when we typically are retained by the issuer, and the growing importance of the contributions from broker-dealers—both monetary and in-kind—with regard to a campaign committee's ability to adequately present its arguments for voter approval for bond measures and other tax-related referenda. Now, more than ever, municipalities, school districts, special districts and other public entities—and their respective citizen-led campaign committees—are in need of the public policy and campaign expertise of experienced regional investment banking firms.

George K. Baum & Company provides the following comments in response to MSRB Notice 2009-35:

- **The prevalence of dealer contributions to bond ballot campaign committees**

  Our firm occasionally provides monetary and/or in-kind assistance to bond ballot campaign committees in California, Colorado, Kansas, New Mexico and Wyoming. These contributions are made to a lesser degree in the other states where we operate (Illinois, Utah, etc.). We believe that a number of regional firms provide similar assistance to clients.

- **Whether there is a nexus between contributions to bond ballot campaign committees for new bond issuances by specific dealers and the securing of roles by those dealers in the related bond underwriting**

  We are typically contractually hired by a municipal issuer months before an election is called, before a campaign committee is formed and before a contribution, if any, is discussed and paid.

  Issuers typically know prior to retaining us that we are experts in the areas of investment banking, public policy development as related to voter approved related matters and voter approved tax

campaigns. Our demonstrated knowledge and expertise in all three of these areas is why we are often retained. We do not believe that issuers retain us as their investment banker because of any specific monetary contribution that we provide and we do not include such in our proposals.

- **The circumstances under which such contributions have been made by dealers having roles in the related bond underwriting, including, but not limited to, the timing of such contributions in relation to key milestones in the bond authorization and underwriting processes**

  George K. Baum & Company offers an extensive number of services with regard to investment banking, public policy development and campaigns. We require that a contract be in place prior to providing such services to an issuer. (Often these contracts are in place 4 to 10 months in advance of a board calling an election).

- **Whether there are certain types of bond ballot measures that receive contributions from dealers more frequently than others**

  A majority of the ballot measures with which we are involved include a general obligation issue. There have been a few sales and use tax measures with which we have been involved, particularly in Colorado and Wyoming.

- **Whether there are certain municipal finance market segments that have more contribution activity than others**

  We provide investment banking and public policy services to many types of issuer clients: school districts, municipalities, counties, special districts, community colleges and others. We also provide, if appropriate, campaign-related services to their respective citizen-led campaign committees. A majority of the citizen-led campaign committees that we have served have been associated with school district bond measures.

- **How such contributions are used by campaign committees**

  If we make a monetary contribution to a citizen-led campaign committee it is typically used to pay for out-of-pocket items such as printing costs for a direct mail piece, yard signs or related campaign items.

- **Whether in-kind contributions are typically used and, if so, whether they should be treated differently from cash contributions**

  In-kind contributions are common when it comes to assistance to citizen-led campaign committees. Examples of common in-kind contributions include consultation on public policy, review of polling data and election strategy. Measurement of in-kind contributions may represent a real challenge in the proposed amendment to G-37. Our professional staff (both bankers and election specialists) spends countless hours assisting our clients in the various elements of a bond election. Accounting for and reporting these efforts is not currently done, and would be very difficult. So, our recommendation is that such in-kind services be treated differently from cash contributions.

- **Whether dealers are solicited to make contributions by campaign committees or by issuers and, if so, how they are solicited (e.g., specifically requested in a request for proposals, etc.)**

  To the best of our knowledge, we have received only two or three RFPs/RFQs over the past 20 years that have requested information about a proposed monetary contribution in connection with a campaign. In each instance, we have refused to commit to any monetary contribution. We "do" provide a detailed summary of the value-added public policy and election-related services that we provide, but we "do not" commit to any monetary contribution.

  During interviews we have been asked on occasion whether we would make a monetary contribution to a campaign committee. Again, we do not commit to a contribution. We stress the knowledge and expertise that we deliver as well as our menu of value-added services (timelines, budget, etc.).

Current situation in terms of public entities meeting their capital improvement and operating needs

It is becoming increasingly difficult for local issuers to obtain resources for an effective campaign, especially given the current economy. Home builders, architects and other businesses are no longer financially able to participate with regard to contributions to citizen-led campaign committees. Many campaign committees also are facing the challenges associated with an aging electorate that is becoming increasingly tax sensitive and skeptical. There also are a growing number of entities competing for tax dollars. It's not uncommon for a school district, special district and municipality to concurrently be on the ballot requesting voter approval for a tax increase. Consequently, it is becoming increasingly difficult for a campaign to get the voters attention. This fact is further compounded by a dwindling volunteer base and the need to reach voters through direct mail. Successful campaigns therefore have become increasingly expensive. A historical examination of voter approved debt well illustrates the challenges public entities presently face. Prior to 2008, school district bond issues experienced overwhelming success during Presidential election cycles. For instance, the percentage of successful school bond issues in Colorado had topped 80%. However in the 2008 election, that figure dropped to about 50%. And this occurred before unemployment rates had reached 10%.

Comment Regarding Municipal Finance Services

The business of Municipal Finance has evolved differently in different parts of the nation. The roles of investment banking firms, and the services that they provide, have similarly evolved accordingly to satisfy the needs of different markets. Regional municipal investment banking firms across the nation have endeavored to provide municipal issuers a variety of services that they have requested and value, including certain services relating to bond elections. We are concerned that the impetus to change Rule G-37 seems to come exclusively from firms who are not in the same service oriented business that many regional firms are committed to, and the clients they seek are large and have significant resources of their own. Smaller school districts throughout the country are attempting to advance their financing/construction agendas. In these extraordinarily difficult times, the regional bond dealers are providing a valuable, legal service in assisting them.

In Notice 2009-35 you have additionally asked:

"Whether a dealer should also be required to disclose whether a specific item of municipal securities business it undertakes is related to a prior contribution to a bond ballot campaign" Yes, we believe that

this may be indicative of "pay to play" and that a record of this may be helpful in formulating further regulation.

"Whether a dealer should be required to identify the person from whom they received a contribution (to a bond ballot campaign committee) request and the solicitation is not pursuant to a request for proposals or related documents." We are unclear as to the meaning of this question.

Summary

1. We have not participated in, nor are we aware of situations where campaign contributions have been solicited as a condition of participation in an underwriting.

2. We believe that the services which our Firm and other regional firms offer are wholly appropriate to successfully presenting local election campaigns in many states. Further, as a heavily regulated business, we must at all times comply with applicable laws, including state and local, and regulations, and we do in this case.

3. The many regional firms which engage in a full service banking practice, including election assistance, know and comply with the campaign finance regulations in their respective states. Further, we each therefore are familiar with the resulting data which is available. Another layer of reporting would not necessarily provide more transparency; rather it would merely list expenditures produced under different state laws. It would not provide an "apples to apples" comparison.

4. We recommend you reject the suggested amendment to G-37.

Thank you for your consideration.

Sincerely,

GEORGE K. BAUM & COMPANY

Robert K. Dalton
Vice Chairman

From: Kent Lund [mailto:lund@gkbaum.com]
Sent: Friday, August 07, 2009 3:06 PM
To: Leslie Carey
Cc: Bob Dalton
Subject: MSRB Notice 2009-35 (June 22, 2009)
Importance: High

August 7, 2009

Leslie Carey, Esq.
Associate General Counsel
MSRB
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2009-35 (June 22, 2009)

Dear Ms. Carey:

This supplements George K. Baum & Company's July 30, 2009, letter to you regarding this matter. As you requested during our telephone conversation earlier today, I will cause to be sent to you via overnight mail (for delivery to your office on Monday) a copy of this E mail and the attached court decision.

Enclosed is a copy of the Findings of Fact, Conclusions of Law and Order Entering Preliminary Injunction that was entered on July 17, 2009, by the District Court, City and County of Denver, CO, in Dallman et al. v. Ritter et al., Case No 09CV1188. In our view, this court decision is material and relevant to the MSRB as it considers proposed amendments to MSRB Rule G-37 as described in MSRB Notice 2009-35 (June 22, 2009).

Especially important, this court decision ruled emphatically (based on the facts and established legal precedent) that contributions to bond election campaigns are materially different, in an alleged "pay-to-play" and/or public corruption context, than contributions to issuer officials or candidates. On page 19 of its order, Judge Lemon of the Denver District Court stated: "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**'". (case citations omitted, emphasis added).

We believe that this court order rejects dispositively any arguments or concerns that contributions to bond ballot campaign committees may "have the potential to result in actual pay-to-play practices or the perception of pay-to-play practices" in the municipal market. Seethe "Request for Comment" section of MSRB Notice 2009-35.

Thanks for your consideration.

Sincerely,

Kent J. Lund
Executive Vice President, Chief Compliance Officer
George K. Baum & Company
lund@gkbaum.com

DISTRICT COURT, COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street, Room 256 Denver, Colorado 80202		
Plaintiffs: KERRIE DALLMAN; LAURENCE BOTNICK; SCHOOL DISTRICT 14 CLASSROOM TEACHERS ASSOCIATION POLITICAL ACTION COMMITTEE, a Colorado political committee; SCHOOL DISTRICT 14 CLASSROOM TEACHERS ASSOCIATION, a Colorado labor organization; AURORA FIRE FIGHTERS PROTECTIVE ASSOCIATION, a Colorado labor organization; and DOUGLAS COUNTY FEDERATION, a Colorado labor organization **Defendants:** WILLIAM RITTER, in his official capacity as the Governor of Colorado; and RICH L. GONZALES, in his official capacity as the Executive Director of Colorado's Department of Personnel and Administration		
Plaintiffs: DANIEL RITCHIE, an individual; PATRICK HAMILL, an individual; CHARLES V. BROWN, JR., an individual; THE CHILDREN'S HOSPITAL ASSOCIATION, a 501(c)(3) nonprofit organization; and THE COLORADO SEMINARY, a 501(c)(3) nonprofit organization, which owns and operates THE UNIVERSITY OF DENVER; and MATTHEW R. DALTON, an individual **Defendants:** BILL RITTER, as Governor of the State of Colorado; and RICH GONZALES, as Executive Director of the Colorado Department of Personnel & Administration		**COURT USE ONLY**
		Case No. 09CV1188 Div./Courtroom 8 Consolidated with: 09CV1200

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERING PRELIMINARY INJUNCTION

This matter comes before the Court on the Dallman plaintiffs' and the Ritchie plaintiffs' motions for preliminary injunction. The motions have been briefed and were the subject of an evidentiary hearing and lengthy arguments before the Court on June 22 and 23, 2009. Being fully advised, the Court makes the following findings of fact and conclusions of law and issues a preliminary injunction enjoining the enforcement of Amendment 54, except for section 16, which requires public disclosure of sole source government contracts.

INTRODUCTION

In November 2008, Colorado voter passed by a narrow margin an initiated constitutional amendment known as Amendment 54, which became effective on December 31, 2008. Predicated on "a presumption of impropriety between contributions to any campaign and sole source government contracts," Colo. Const., art. XXVIII, sec. 15, Amendment 54 prohibits contributions to any candidate for any elected office of the state, the counties, municipalities and special districts and to any political party made by the holder of "sole source government contracts" valued in the aggregate at more than $100,000. The amendment also prohibits contributions to promote or influence a ballot issue election by a person who wants to qualify for a sole source government contract relating to the ballot issue. Sec. 17(2).

The amendment defines "sole source government contract" as "any government contract that does not use a public and competitive bidding process soliciting at least three bids" and includes within the definition public-sector collective bargaining agreements. The definition of "contract holder" includes certain investors in for-profit corporations; officers, directors, and trustees of both for-profit and nonprofit corporations; and labor organizations and their "political committees."

Both sets of plaintiffs claim that Amendment 54 violates their First Amendment rights to free speech and association. The Dallman plaintiffs claim in addition that the amendment violates their rights to equal protection and that Amendment 54 violates the Colorado constitutional single subject requirement and is being applied without regard to the $100,000 threshold as to collective bargaining agreements.

PROCEDURAL POSTURE OF THE CASE

The Ritchie plaintiffs filed a motion for preliminary injunction and supporting brief on February 19, 2009. The Dallman plaintiffs filed a motion for preliminary injunction and supporting brief on March 10, 2009. The state defendants filed briefs in opposition to both of the motions for preliminary injunction. The proponent of Amendment 54, Clean Government Colorado, filed an Amicus Response to Ritchie Motion for Preliminary Injunction. Both sets of plaintiffs filed reply briefs, and the Ritchie plaintiffs filed a supplemental reply brief.

The court inquired whether the materials submitted and the evidence and arguments heard at the hearing should be considered the trial on the merits. Counsel for the state defendants objected, stating that the defendants wanted at a later date to put on expert testimony about "capture theory." For that reason, the court considered only the motions for preliminary injunction.

SUMMARY OF AMENDMENT 54's PROVISIONS

Amendment 54 provides that

> contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions. Sec. 15.

A "contract holder" is

> any non-government party to a sole source government contract, including persons that control ten percent or more shares or interest in that party; or that party's officers, directors or trustees; or in the case of collective bargaining agreements, the labor organization and any political committees created or controlled by the labor organization. Sec. 4.5.

An "immediate family member" includes "any spouse, child, spouse's child, son-in-law, daughter-in law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner." Sec. 18.5.

A "[s]ole source government contract" is "any government contract that does not use a public and competitive bidding process soliciting at least three bids prior to awarding the contract." Sec. 14.4. The amendment applies to contracts between a contract holder and all government entities with a cumulative annual value of more than $100,000. *Id.* A sole source government contract "includes collective bargaining agreements with a labor organization representing employees" if the contract "confers an exclusive representative status to bind all employees to accept the terms and conditions of the contract." *Id.*

The amendment applies to

> the State of Colorado and its agencies or departments, as well as all political subdivisions within the state including counties, municipalities, school districts, special districts, and any public or quasi-public body that receives a majority of its funding from the taxpayers of the State of Colorado. Sec. 14.6.

Amendment 54 provides that any person who makes "any contribution intended to promote or influence the result of an election on a ballot issue shall not be qualified to enter into a sole source government contract relating to that particular ballot issue." Sec. (17(2).

Amendment 54 provides sanctions against candidates, campaign and issue committees, and political parties:

> [a]ny person who intentionally accepts contributions on behalf of a candidate committee, political committee, small donor committee, political party, or other entity, in violation of section 15 has engaged in corrupt misconduct and shall pay restitution to the general treasury of the contracting governmental entity to compensate the governmental entity for all costs and expenses associated with the breach, including costs and losses involved in securing a new contract if that becomes necessary. Sec. 17(1).

Elected or appointed officials may be removed from office and disqualified to hold "any office of honor, trust or profit in the state" for knowing violations of sections 15 and 17(2) of the amendment. Sec. 17(4).

The amendment sanctions contract holders by disqualifying any person who makes an improper ballot issue contribution from entering into a contract relating to the issue. Sec. 17(2). The amendment requires the parties to agree that "if a contract holder intentionally violates" sections 15 and 17(2), the "contractual damages" must include the contract holder's three-year disqualification from holding any sole source government contract "or public employment" with the state or "any of its political subdivisions." Sec. 17(3). To aid in its enforcement, Amendment 54 creates a state database that lists sole source government contracts and the parties to each contract. Sec. 16.

FINDINGS OF FACT

A. Based on testimony at the preliminary injunction hearing.

The court makes the following findings based on the testimony of Plaintiff Daniel Ritchie, Aurora City Council member Robert FitzGerald, and School District 14 Classroom Teachers' Association President, David Clark, and on the exhibits filed by the parties, including the affidavits and exhibits attached to pleadings, which were all stipulated into evidence.

1. Mr. Ritchie is the unpaid chief executive officer and chair of the board of trustees for the Denver Center for the Performing Arts ("DCPA"). He is a member of several other boards for large non-profits. The DCPA has six officers and a 27-member board of trustees who serve without any compensation. Board members are committed to what the DCPA does, make financial contributions to support the DCPA and are otherwise involved in the community. All of the board members have made campaign contributions in the past. One board member resigned after Amendment 54 became effective; the board member wanted to continue to make campaign contributions.

2. The DCPA has several types of sole source contracts with the City and County of Denver: they include leases for the use of the arts and humanities building, the theater complex, and the auditorium for touring Broadway plays; user agreements governing DCPA events; an agreement that exchanged land for the "free" use of 72 parking places owned by the City; a lease

of the first floor of the arts and humanities building; and an agreement for the DCPA to provide security services for the complex. The aggregate value of the contracts is more than $100,000. These contracts are not the product of a public bidding process. With the exception of one officer, DCPA's president, staff members of the DCPA negotiate the contracts, and neither Mr. Ritchie nor the board members are aware of the details of the contracts.

3. Since passage of Amendment 54, Mr. Ritchie regularly cautions the DCPA officers and members of the DCPA board that the DCPA could lose its contracts with Denver and be out of business if officers, board members or their immediate family members contribute, directly or indirectly, to any political campaigns. He advises them not to persuade friends to contribute, not to volunteer, not to put up yard signs and not to contribute to ballot measures. He has no ability, however, to control or police whether they or their extended family members make campaign contributions.

4. Mr. Ritchie was also the chancellor of the University of Denver for 16 years, beginning in 1989, and later served as chair of its board of trustees, all unpaid. At the time, neither Mr. Ritchie nor his board members were aware of the sole source contracts that members of the faculty in the graduate school of social work had with governmental entities to address welfare and child care. The contracts were not the product of a public bidding process.

5. Before Amendment 54 became effective, Mr. Ritchie made numerous campaign contributions to both Republicans and Democrats running for state-wide office, legislative seats, local office, and the Denver School Board, to political parties and political committees, and to campaigns for and against ballot measures. He contributed because he wanted to support good governance in Colorado, to allow candidates to have their ideas heard, and to respond to requests from friends. Mr. Ritchie has received campaign solicitations since Amendment 54 became effective, but he has made no contributions, except on the federal level, because of his status as a sole source contract holder by virtue of his nonprofit board service. He has never sought a sole source contract from anyone to whom he contributed.

6. Robert FitzGerald is an Aurora City Council member-at-large who is currently seeking re-election to and campaigning for to his nonpartisan position. Aurora has mail-in ballots that will be sent out in early October 2009. He and five others are competing for two at-large council seats. Mr. FitzGerald anticipates that he will need to raise about $50,000 in campaign contributions to be competitive. Aurora has a population of more than 300,000, and campaign contributions are needed to pay for cable TV time, yard signs, brochures and robo calls to get his message out. In his 2005 campaign, Mr. FitzGerald raised $29,000 from friends, family members, businesses and unions.

7. Amendment 54 has impaired Mr. FitzGerald's ability to raise funds. Several people who made contributions to Mr. FitzGerald's campaign in 2005 have told him that they cannot contribute this year because of Amendment 54. They are unsure of the scope of Amendment 54 and do not want to get into trouble. Mr. FitzGerald would like to accept contributions from political action committees ("PACs"), as he has in the past, but Amendment

54 prohibits teacher union PACs and firefighter union PACs from making contributions. Also, he needs volunteers to make calls and stand on street corners with signs, and he believes that Amendment 54 can be read to prohibit contributions of time by volunteers who are sole source contract holders.

8. Mr. FitzGerald regularly checks the list of sole source contracts published and maintained by the defendant director of the state department of personnel and Aurora's list of sole source contracts. The Aurora city attorney has told him not to rely on the completeness of Aurora's list. As of June 8, 2009, Mr. FitzGerald counted 229 individuals and 39 firms that had listed sole source contracts on the state's list; he does not believe that the list is complete, and it does not inform him of when a contract holder's aggregate contracts have exceeded $100,000 or the names of family members of a contract holder.

9. Mr. FitzGerald is serving as his own campaign treasurer. He did not want his friend, who was his campaign treasurer in 2005, to risk the sanctions for bookkeepers in Amendment 54. He is concerned about erroneous acceptance of a check forbidden by Amendment 54, including a "planted" check, because a lawsuit filed by any registered voter in the state could ruin his reputation. He would have to pay to defend himself, he could be removed from office, and a finding of "corrupt misconduct" could jeopardize, among other things, his license to practice law.

10. The Aurora city charter prohibits the mayor and council members from administering or interfering with city contracts. No one has ever asked him for assistance in obtaining a sole source contract. No Aurora council member or the mayor has the ability to award sole source contracts.

11. In his previous campaign for city council, FitzGerald took contributions from political committees, including at least one that is affiliated with a public employees union (police) in Aurora. Political committee contributions comprised 8-15% of his $29,000 campaign budget and were important to FitzGerald's ability to campaign and communicate effectively because of the number of candidates running, the relatively low profile of a city council race, and the fact that FitzGerald had been appointed to office and thus had not yet won an election. In the city council election in October/November, 2009, FitzGerald anticipates that five candidates will run for that office, and he would again need to accept such political committee contributions in order to be competitive.

12. FitzGerald is uncertain about the legality of a campaign contribution to his city council campaign if it comes from a small donor committee, such as JCEA PAC/SDC, and would likely not deposit it until he received additional clarity about the reach of Amendment 54. Given the reach of Amendment 54, he is also uncertain about contributions from individuals he does not know or who live outside of Aurora (including Plaintiff Kerrie Dallman who lives in Commerce City), and he would be reluctant to accept those contributions as well.

13. David Clark, president of School District 14 Classroom Teachers Association ("Classroom Teachers Association"), testified that the Association is a labor organization representing the certified employees of the district in collective bargaining with the district. In negotiating for employees, Classroom Teachers Association is particularly attentive to three issues: wages, benefits, and working conditions. The Collective Bargaining Agreement ("CBA") lists the members of the District and union negotiation teams; no member of the Board of Education sits on the team that negotiates the CBA. After it is negotiated, the CBA is presented to the Association for ratification. Upon a favorable vote by the Association, the Board of Education considers the CBA for ratification.

14. School District 14 Political Action Committee ("District 14 Political Committee") is the entity through which candidate contributions are made on behalf of Association members. It has a specific process for considering candidates for the Adams County School District 14 Board of Education ("Board of Education" or "School Board") for endorsement and financial support. Candidates generally file their petitions to be placed on the ballot by mid-August. The Political Committee's interview committee then sends out questionnaires to candidates and reviews the completed forms. The Committee interviews each candidate and makes recommendations to the Executive Board of the Classroom Teachers Association. The Executive Board considers these recommendations and then makes its own suggestions to Association Representatives. Association Representatives are individuals chosen to represent Classroom Teachers Association members in each school building. There are 25 Association Representatives that represent employee groups in 13 school buildings in District 14. This group decides whether to endorse and contribute to a school board candidate committee. Endorsed candidates may, but do not necessarily, receive contributions from the District 14 Political Committee. If the Association Representatives accept the recommended candidates and agree to fund one or more of them, checks would be solicited from individual Association members and placed in the bank account of the District 14 Political Committee. Checks for candidate contributions then would be written on that account.

15. Prior to the November 2005 election, Classroom Teachers Association endorsed two candidates running for Board of Education, a political subdivision of the state. Those candidates were Angela Kreutzer and Kevin Phillips. Based on a vote of the Association Representatives, District 14 Political Committee wrote checks for $1,000 to Kreutzer and $1,000 to Phillips from funds the Political Committee owned and controlled. This contribution was based upon the assessment that the endorsed candidates held significantly different positions from the non-endorsed candidates on two key issues: support of public education, as opposed to support of charter schools and education vouchers; and the right of employees to engage in a meaningful collective bargaining process.

16. The funds expended to candidates in 2005 were voluntarily contributed to the Political Committee by members of the School District 14 Classroom Teachers Association through individuals' checks that had been written directly to the Political Committee. District 14 Political Committee does not have a system for deducting contributions for the Committee, either directly from their paychecks or from member dues paid to the Classroom Teachers Association.

17. The most recent CBA was negotiated consistent with procedures specified in Article 4 of the CBA. Kreutzer still sat on the Board of Education when that CBA was negotiated. There is no evidence that District 14 Political Committee's candidate contributions affected negotiations of the CBA or that the public perceived they did so.

18. In the November 2007 election, District 14 Political Committee endorsed candidates for the Board of Education, but the Association Representatives decided not to make any contributions to any candidate for this office. Unlike the 2005 election, the distinction among all of the candidates was not so great as to merit a financial contribution to one candidate over any other candidate.

19. District 14 Political Committee has never made contributions to candidates for statewide or legislative office and does not plan to make any such contributions during the 2010 election cycle.

20. In the November, 2009 election, Classroom Teachers Association seeks to endorse, and District 14 Political Committee seeks to contribute to, candidates for the Board of Education. Based on candidates who are known to be considering seeking a position on the School Board, District 14 Political Committee anticipates choices among candidates that will be extremely clear on issues that are of importance to Association members, much like the 2005 election. Given the application of Amendment 54, District 14 Political Committee cannot collect funds from Classroom Teacher Association members and then use those funds to make contributions to School Board candidates.

21. District 14 Political Committee currently has about $39.15 in its bank account and would have to raise additional funds in a timely manner in order to make contributions to School Board candidates in 2009.

22. Certified employees, defined in Article 3 of the CBA, become members of Classroom Teachers Association by completing a form and paying the appropriate monthly dues ($57.60 for full-time teachers and half that amount for half-time teachers). Classroom Teachers Association has approximately 377 members out of approximately 450 certified employees who could qualify for Association membership.

23. Classroom Teachers Association contributed to an issue committee, "Kids First," to affect the outcome of local ballot issues that relate to the Association. Specifically, Classroom Teachers Association supports ballot issues that would fund improvements in the District's schools where the members of the Association work. In 2006, Classroom Teachers Association expended $1,295.00 for campaign banners that advocated the passage of a local bond issue to: build a new high school to replace an aging one; update all science classrooms in the District; provide classrooms that would accommodate full-day kindergarten; and install air conditioning to provide a better learning and working environment given the mid-August starting date of the school year. The banners included Classroom Teachers Association's name and a slogan supporting the bond issue campaign. After members of the Classroom Teachers Association marched with the banners in a parade in Commerce City, the Association donated them to Kids

First. Kids First used the banners at subsequent campaign events to promote awareness and support of the ballot issue. That committee reported the banners as an in-kind contribution received from Classroom Teachers Association. The funds expended on the banners were taken from dues paid by members of the Association, after a vote of the Association Representatives.

24. There is no evidence that the Classroom Teachers Association's contribution to Kids First affected the negotiations of the CBA or that the public perceived that it did.

25. Classroom Teachers Association seeks to contribute to committees supporting such ballot issues in the future and anticipates that there will be an upcoming election to increase the district mill levy to provide additional operating revenue for the District. Given the application of Amendment 54, the Association will be prohibited from doing so.

26. The CBA between Classroom Teachers Association and School District 14 specifically addresses a number of issues relating to teacher working conditions that could be affected by future statewide ballot measures, including but not limited to: the basic equipment provided for a teacher in each classroom; leave policies for teachers who serve in the military or in the General Assembly; remedies for teachers assaulted on school grounds; and the ability of the Association to use facilities, mailboxes, electronic equipment, and bulletin boards with the schools to post Association-related information. If such ballot issues were to be placed on the statewide ballot, the Association would want to contribute in order to promote or influence the result of these elections. Given the application of Amendment 54, the Association will be prohibited from doing so.

B. Stipulated facts.

Most of the facts are the subject of formal, signed documents entitled "Stipulated Facts" (for the Ritchie case), which include summaries of some of the exhibits, and "Stipulation of Facts Regarding Dallman Claims." The stipulations of facts were presented to the court at the beginning of the hearing. The parties stipulated to the following pertinent facts as true.

1. Plaintiff Matthew Dalton is a director and shareholder with the law firm of Grimshaw & Harring, P.C. Grimshaw & Harring has multiple sole source government contracts to provide legal services for numerous political subdivisions and special districts. The aggregate value of the contracts is more than $100,000. The firm assists in organizing special districts that shoulder the burden of financing, and subsequently constructing and maintaining, necessary infrastructure for property being developed or that is underserved. After the development is complete, the firm usually continues to represent the district. Grimshaw & Harring has complied with the disclosure requirements of Amendment 54.

2. In 1981, the General Assembly passed the Special District Act. Special districts are local governments that may provide services to promote the health, safety, prosperity, security and general welfare of the residents of the district. Special districts have the authority to issue debt and to levy and collect property taxes. Metropolitan districts are a type of special

district. They provide two or more services, including fire protection, mosquito control, parks and recreation, safety protection, sanitation, solid waste disposal facilities or collection and disposal of solid waste, street improvement, television relay and translation, transportation and water services. Metropolitan districts are often formed for the purpose of providing infrastructure in order to promote development. The funding for the infrastructure comes from issuance of general obligation bonds.

3. The Department of Local Affairs website lists 78 types of local governments that include 62 counties, 269 cities and towns, 178 school districts and more than 3000 active special districts of various types.

4. Elections are held to approve the creation of special districts and to elect board of directors' members for the district.

5. Except for the large special districts, most special districts operate without staff. Typically, all of the contracts entered into by special districts are sole source government contracts as defined by Amendment 54.

6. Mr. Dalton made contributions to candidates for elective office before the effective date of Amendment 54, but he has never made a contribution to a special district board director and has never sought to obtain a sole source contract from anyone to whom he has made a political contribution. He believes that the firm's sole source government contracts prevent him and his family members from making any campaign contributions within the state.

7. Plaintiff Charles V. Brown, Jr., is a member of Denver's City Council. He also serves as a board member of Visit Denver, a nonprofit trade association that is responsible for marketing Denver as a convention and leisure destination. The Visit Denver bylaws reserve two seats on the Visit Denver board for Denver City Council members; the president of the City Council appoints the members.

8. Visit Denver has a sole source government contract with Denver that commenced on January 1, 2004, and is subject to options for additional one-year periods through December 13, 2013. The annual contract is in excess of $100,000.

9. As a board member of Visit Denver, Mr. Brown believes that he is subject to Amendment 54's ban on campaign contributions. He made campaign contributions to candidates and to campaigns for ballot issues before the effective date of Amendment 54. Given the ban on campaign contributions, Mr. Brown believes that he cannot make direct or indirect contributions to candidates for elective office, including contributions to his own campaign for re-election in May 2011, and that he will not be able to request campaign contributions from his family members. He does not understand the scope of "indirect" contributions. He has never assisted anyone, including Visit Denver, in obtaining a sole source contract. The state agreed that Amendment 54 prohibits Mr. Brown and his family members from making contributions to his campaign; the state conceded that this application of Amendment 54 is unconstitutional. *See*

Buckley v. Valeo, 424 U.S. 1, 53 (1976) (provisions limiting expenditures by candidate on his or her own behalf and from the candidate's immediate family violated candidate's rights to freedom of speech).

10. Plaintiff Patrick Hamill is the chair and chief executive officer of Oakwood Homes, a private contractor for construction projects in Denver and in Green Valley Ranch, a planned community that Mr. Hamill developed. Mr. Hamill is also the president and CEO of HC Development, the developer for Oakwood Homes. Oakwood Homes and HC Development have sole source contracts with a number of metropolitan districts that they helped to create, and with the Denver Public Schools, aggregating in excess of $100,000 annually. The Foundation for Educational Excellence, a nonprofit corporation that Mr. Hamill co-founded, has received over $3.0 million from Oakwood Homes to improve the public schools, particularly in Green Valley Ranch.

11. Among the nonprofit and special district boards of which Mr. Hamill is a member are the University of Denver and the Boys and Girls Club of Metro Denver. Both have sole source government contracts in excess of $100,000 annually.

12. Mr. Hamill believes that he is a sole source government contract holder because he is an officer of his for-profit corporations and a board member of two non-profit corporations. Before the effective date of Amendment 54, Mr. Hamill made contributions to candidates for state-wide elective office, to legislative races, to candidates in local elections, to political parties and to influence the result of ballot election issues. He believes that Amendment 54 prevents him from making contributions to campaigns of candidates for elective office and to political parties. He also believes that "indirect" contributions banned by the amendment include volunteering for a campaign, serving on a finance committee and helping raise funds for a candidate. Mr. Hamill has never made a contribution in order to obtain a government contract.

13. Plaintiff Children's Hospital is a 501(c)(3) nonprofit corporation. It is considered one of the best children's hospitals in the country. The hospital has 3,000 full-time employees, an active medical staff of more than 1,000, and more than 2,000 volunteers. Its employees and volunteers often support ballot issues that relate to children's health and welfare.

14. Children's Hospital is a sole source government contract holder because it has many Medicaid contracts, numerous contracts to provide nursing services and occupational therapy to various school districts and other political subdivisions, and contracts with the City and County of Denver for health care services. The aggregate amount of the contracts is more than $100,000 per year.

15. Children's Hospital has 43 board members who are involved in the community and donate substantial sums of money to the hospital; many of the board members have a child who was treated at the hospital. Some of the board members are required to serve because of an affiliation with the University of Colorado Medical Center. The board members are not involved in the negotiations for single source contracts, and they are not aware of the individual contracts.

The hospital's officers and board members believe that they are sole source government contract holders, subject to the ban on campaign contributions.

16. Children's Hospital believes that its board members are precluded from making contributions to candidates for elective office, to political parties and to influence the result of ballot issue elections relating to children's health and welfare. All of the hospital's board members contributed to candidates for elective office before the effective date of Amendment 54. Because they do not want to jeopardize the contracts with the state, Denver and school districts, board members are unlikely to make any campaign contributions.

17. Plaintiff University of Denver ("DU") is owned by a 501(c)(3) nonprofit organization. DU has sole source government contracts with the state and various political subdivisions, including school districts, Denver and Jefferson County, in the aggregate exceeding $100,000 per year. The contracts primarily are for early childhood education, mental health services and instruction program materials, and they relate to the expertise of faculty members. None of the sole source contracts were presented to the board for consideration. None of the board members assist DU in obtaining or negotiating sole source contracts.

18. DU has 28 members of its board of trustees. DU believes that its board members, as sole source government contract holders, are precluded from making contributions to the campaigns of candidates for elected office and to political parties. All of its board members contributed to political candidates before the effective date of Amendment 54. DU's chancellor believes that Amendment 54 will make it more difficult to attract and retain community leaders to serve on its board.

19. Tamara Door is the president and chief executive officer of the Downtown Denver Partnership, Inc. ("DDP"). DDP is a nonprofit business organization that plans, manages and develops areas of downtown Denver. DDP has a management agreement with the Business Improvement District ("BID") for DDP to manage BID's programs. BID is a quasi-municipal corporation and political subdivision of the state funded by private commercial property owners. The mayor of Denver appoints the members of BID's board of directors. The management agreement is a sole source government contract in excess of $100,000.

20. Ms. Door believes that DDP, its affiliate organizations and their respective board members are all sole source government contract holders under Amendment 54. The board members believe that they are precluded from making direct or indirect contributions to the campaign of candidates for elective office, to political parties and to promote or oppose ballot issues. One of the board members resigned because of Amendment 54.

21. DDP has worked for several years as a public/private partnership with Denver and the BID to create a special improvement district for improvements on 14th Street in downtown Denver, known as the 14th Street Initiative. An election for approval of the special improvement district is set for the fall of 2009. Because DDP has contributed time and money to planning for

the election, DDP may be prohibited from entering into a contract with BID to manage and/or provide services for the 14th Street Special District.

22. Patricia Waak, the chair of the Colorado Democratic Party, and Dick Wadhams, the chair of the Colorado Republican Party, have learned from regular communications with elected leaders, potential and actual candidates for elective office, political fundraisers and political donors that Amendment 54 is making it more difficult to raise money to pay for party needs and for candidates' campaigns to promote their political message. The candidates and potential donors are confused as to the reach of Amendment 54 and are uncertain about whether they can make, and accept, political contributions to favored candidates or causes.

23. Ms. Waak and Mr. Wadhams have never assisted or promised to assist a contributor with securing a sole source government contract, and have never had communications with any government official to influence the award of a sole source government contract to a contributor.

24. A letter from Cary Kennedy, state treasurer, and a memo from the director of the state House Majority Project to Democratic members, Ritchie exs. 144 and 145, are examples of warnings that candidates for election are giving to potential donors about Amendment 54.

25. In Colorado, public-sector unions gain recognition as the exclusive representative of a unit of employees through the following process. First, the union must demonstrate that a majority of employees in the bargaining unit have chosen the union to be their representative for the purpose of collective bargaining. This demonstration of employee support is usually accomplished by holding an election. The employer may then recognize and bargain with the union concerning the appropriate subjects of collective bargaining. A public-sector employer's recognition of a union for the purposes of collective bargaining may be formalized by: (a) a CBA; (b) a provision of law, such as a municipal charter; (c) a resolution adopted by a governing body, such as a fire protection district board of directors; or (d) a side-agreement with an authorized public official, such as a city manager. When a union is recognized as the exclusive representative of a unit of employees, such recognition may be withdrawn upon a showing by the employees that a majority of individuals in the unit no longer desire to have the union act as their exclusive representative.

26. Plaintiff Kerrie Dallman is a taxpayer and a registered elector, residing in the state of Colorado. Dallman is President of the JCEA and serves on the JCEA Political Action Committee/Small Donor Committee. JCEA-PAC/SDC was created by JCEA, is registered with the Secretary of State, and operates as a small donor committee under Colorado law. The JCEA-PAC/SDC expends funds for political action that have been collected voluntarily from members, and it contributes to candidates even if their districts are not located in Jefferson County. Dallman has contributed directly to one or more candidates for public office in Colorado, including Jane Goff, a candidate for the State Board of Education, and desires to make contributions to candidates for public office in Colorado in the future.

27. Plaintiff District 14 Political Committee is a political committee formed under Colorado law and created by the Classroom Teachers Association. District 14 Political Committee was formed in 1997. It does not receive $100,000 or more of government funds.

28. Classroom Teacher Association's members alone decide that the Association is their representative for purposes of contract negotiations with School District 14; the School District has no voice in determining the identity of the members' representative. The District recognized the Classroom Teachers Association as the teachers' bargaining unit after an election was conducted in the 1970s among certain professional staff in the District. The current CBA recognizes the Classroom Teachers Association as the exclusive representative of district certified employees.

29. Any tentative CBA must be accepted by a vote of the Association membership and by the Board of Education in order to become effective. Classroom Teachers' Association executed a CBA with School District 14 for the period July 1, 2008 through June 30, 2011. Classroom Teachers Association has not received $100,000.

30. Plaintiff Aurora Fire Fighters Protective Association ("AFFPA"), doing business as Local 1290 of the International Association of Fire Fighters, is a labor organization. It is a non-governmental party to a CBA with the City of Aurora, which is a "municipality" and thus a political subdivision of the state for purposes of Amendment 54. The CBA recognizes Local 1290 as the exclusive bargaining agent for the covered employees.

31. Since the late 1960s, the Aurora city charter has provided for the certification of an employee organization "as the sole and exclusive agent for all members of the bargaining unit" of fire fighters. AFFPA has been so certified for that period of time and remains so today.

32. A majority of AFFPA members voted to have AFFPA, through Local 1290, act in this fashion. At no time has the City of Aurora chosen the fire fighters' bargaining agent. The City of Aurora and Local 1290 executed CBAs for the periods January 1, 2007 through December 31, 2008 and January 1, 2009 through December 31, 2010. AFFPA has never received $100,000 or more of government funds.

33. In 2006, AFFPA contributed funds from dues collected from its members to the Committee to Save Aurora, which was organized as an issue committee to oppose certain changes to the Aurora civil service system that would have affected the way in which AFFPA could represent its members under a CBA. Specifically, the measures would have altered the hiring, promotions, and disciplinary review processes under Aurora law. Two of these measures were adopted, and two of them were defeated. In 2004, AFFPA contributed funds from dues collected from its members to an issue committee that supported a proposed ballot issue to impose a public safety tax. That tax would have added funding to Aurora's police and fire departments for purposes of improving the delivery of public safety services in the city. That ballot issue was defeated. In 2005, AFFPA contributed $10,000 of its funds to a statewide issue committee that supported Referenda C & D.

34. AFFPA seeks to make future contributions to issue committees that promote or seek to influence the result of ballot issue elections that relate to the interests of AFFPA. Because of Amendment 54, AFFPA believes it can no longer contribute to any issue committee regarding ballot issues that relate to its interests, including ballot issues like the local measures considered by voters in 2004 and the statewide measure considered by voters in 2005.

35. AFFPA has contributed to candidates for municipal office from its dues collections, as it is permitted to do by local ordinance and charter. Decisions about whom to endorse and fund are based upon candidates' positions on the adequacy of funding of the fire department, the funding of key infrastructure that affects fire department operations, and other public safety issues. AFFPA believes it will be unable to make such contributions in the future, given the provisions of Amendment 54.

36. AFFPA does not have a political committee or a small donor committee, although it was planning prior to the passage of Amendment 54 to form a political committee. After the enactment of Amendment 54, however, AFFPA terminated these plans because it believed that it was prohibited by Amendment 54 from using a political committee to make political contributions.

37. Plaintiff Douglas County Federation ("DCF") is a labor organization and operates as Local Union 2265, affiliated with the American Federation of Teachers. DCF is a non-governmental party to two CBAs with the Douglas County School District that establish the terms and conditions of employment for the District's teachers, as well as its classified employees (non-teachers, including educational assistants, custodians, and clerical employees but excluding bus drivers). These two CBAs are independently negotiated and function separately. In all other regards, the approximately 3,300 members (2,500 teachers and 800 classified employees) combine their efforts, and the two employee groups act jointly through DCF. Each DCF member pays dues to DCF. The CBAs recognize DCF as the exclusive bargaining agent for all covered employees.

38. The certified teachers formed a bargaining unit on March 1, 1978. The U.S. Department of Labor conducted an election at the request of the School District in which the teachers selected, by majority vote, DCF as their exclusive bargaining agent. At no time has the District chosen the teachers' bargaining agent. The classified employees formed a second bargaining unit in 2005. At that time, the employees selected, by majority vote, DCF as their exclusive bargaining agent. At no time has the District chosen the classified employees' bargaining agent.

39. DCF executed CBAs with the School District for the period 2006-2009 (classified employees) and 2008-2011 (certified teachers).

40. DCF has made contributions to attempt to affect the outcome of local ballot issues and desires to do so in the future. For example, in 2008, DCF contributed $1,000 to Citizens 4 DC Schools, a ballot issue committee that was formed for the purpose of supporting measures such as the proposed 2008 mill levy increase to fund operational expenses (Measure 3A) and the

2008 bond issue for new capital construction in facilities in which DCF employees work (Measure 3B). The voters rejected both ballot measures. DCF also contributed $10,000 to Citizens 4 DC Schools in December, 2008, to support its advocacy of measures like 3A and 3B. Because of Amendment 54, DCF can no longer contribute to Citizens 4 DC Schools or any other issue committee that promotes or seeks to influence the outcome of ballot issues that relate to it, including ballot issues like Measure 3A and Measure 3B.

41. In addition to its collective bargaining agreement with the Douglas County School District, DCF has an independent agreement with the District whereby DCF is paid by the District to develop and provide teacher training programs. This contract has been in place for several years and has been renewed annually.

42. On January 1, 2009, the Colorado Department of Personnel and Administration issued a Technical Guidance to assist in the implementation of Amendment 54 and proposed contract language to comply with the requirements of the amendment.

43. On May 29, 2009, Secretary of State Bernie Buescher proposed a rule regarding Amendment 54. Specifically, Buescher's proposed rule would define "sole source government contract" to exclude "any contract for which there is no legal requirement or authority for a competitive bidding process." It states that such contracts include but are not limited to: (a) a contract awarded to "a utility that has been granted exclusive retail service territory by the Public Utilities Commission through a certificate of public necessity and convenience; and (b) a provider participation agreement entered into and between a provider with a current Colorado medical assistance program provider ID number and the Colorado Department of Health Care Policy and Financing." (Exhibit 13-Dallman.) A problem with the proposed rule is that it excludes from the operation of Amendment 54 one of the specific examples of sole source government contracts included in the Blue Book, public utility contracts. While it might have been reasonable for the authors of Amendment 54 to limit it to contracts for which a competitive bidding process would be appropriate, or at least possible, the Blue Book examples preclude such an interpretation.

44. The defendants are Bill Ritter, the governor of Colorado, and Rich L. Gonzales, the executive director of the Colorado Department of Personnel and Administration, who is responsible for implementing the state database that lists sole source contracts; both are sued in their official capacities only.

CONCLUSIONS OF LAW

PRELIMINARY INJUNCTION STANDARD

The plaintiffs must demonstrate the following six elements in order to warrant the granting of a preliminary injunction under Rule 65(a) of the Colorado Rules of Civil Procedure: 1) a reasonable probability of success on the merits; 2) a danger of real, immediate, and irreparable injury, which may be prevented by injunctive relief; 3) that there is no plain, speedy,

and adequate remedy at law; 4) that the granting of a preliminary injunction will not disserve the public interest; 5) that the balance of equities favors the injunction; and 6) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982). The decision to issue a preliminary injunction lies within the sound discretion of the court. *Id.* at 652.

Reasonable Probability of Success on the Merits

Single Subject Requirement

The Colorado Constitution limits citizen initiatives to a single subject, which must be clearly expressed in the title of the initiative. Colo. Const., Art. V, Sec. 1(5.5). Titles are set by the Title Board, after public hearings. C.R.S. § 1-40-106. Any person not satisfied with the Title Board's decision with respect to whether a petition contains more than a single subject must file a motion for a rehearing within seven days after the decision is made or the titles and submission clause are set. C.R.S. §1-40-107(1). An objector may appeal the Board's decision to the Colorado Supreme Court. *Id.* Accordingly, jurisdiction to review a single subject challenge to Amendment 54 is limited to the process at the Title Board and the Colorado Supreme Court; this Court lacks jurisdiction over the instant challenge.

The Dallman Plaintiffs, therefore, have not demonstrated a reasonable probability of success on their claim that Amendment 54 violates the single subject requirement.

First Amendment Standards of Review

Campaign finance restrictions, such as limitations on the amount of contributions, burden core political speech and association freedoms protected by the First Amendment. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 75 (Colo. 2008) (citing *Buckley v. Valeo*, 424 U.S. 1, 15 (1976)). The constitutional right of association is linked with the right of free speech and "originates from the Supreme Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.'" *Id.* The freedom to associate encompasses the freedom to "contribute financially to an organization for the purpose of spreading a political message." *Sanger v. Dennis*, 148 P.3d 404, 414 (Colo. App. 2006) (citing *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 296 (1981)).

Generally, a limitation on campaign contributions must be "closely drawn to match a sufficiently important [governmental] interest." *Colo. Educ. Ass'n*, 184 P.3d at 79 (quoting *McConnell*, 540 U.S. at 136). This is an intermediate level of scrutiny, applied in recognition of the fact that, although campaign contributions implicate core political speech and association, they are a "less pure form of political speech" and, thus, require "less compelling justification than restrictions on independent spending..." *Id.* "Despite this more relaxed constitutional standard, contribution limitations affect core political speech. As such, they ... operate in an area where we 'give the benefit of the doubt to speech, not censorship.'" *Id. (citation omitted.)*

The government must demonstrate that the challenged restrictions further an interest of sufficient importance to outweigh the countervailing interest in protecting free speech on political matters, and that there is a sufficiently close fit between the ends the government seeks to achieve and the means it has chosen to achieve those ends. *See, e.g., Buckley*, 424 U.S. at 26-28, 45-48; *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 387-88 (2000).

The question of whether a particular enactment is closely drawn to match a sufficiently important governmental interest is one of "proportionality." *Randall v. Sorrell,* 548 U.S. 230, 249 (2006). In *Randall,* the Court struck down Vermont's campaign contribution limits because the dollar limits were too low. Justice Breyer stated in his plurality opinion, "[t]he contribution limits are unconstitutional because ... they fail to satisfy the First Amendment's requirement of careful tailoring. (Citation omitted.) That is to say, they impose burdens upon First Amendment interests that (when viewed in light of the statute's legitimate objectives) are disproportionately severe." *Id. at 236-37.*

Amendment 54 does not merely limit the dollar amounts of campaign contributions, as do most federal and state campaign finance reform laws, including Colorado's before Amendment 54. Rather, Amendment 54 bans those who are subject to it from making any campaign contributions at all to any candidate at any level of government anywhere in the state, as well as to political parties and ballot issues. This distinction is an important one because a ban on contributions eliminates the symbolic expression of support that political contributions represent, which is left intact by mere limitations on the amount of contributions. *See Randall v. Sorrell*, 548 U.S. at 246-47. While the U.S. Supreme Court has ruled that a ban on contributions is not *per se* unconstitutional or subject to the strict scrutiny standard of having to be "narrowly tailored" to match a "compelling state interest," the fact that a challenged enactment involves a ban rather a mere limitation on the amount of contributions is to be taken into account in weighing the proportionality of the ban relative to the state interest it is supposed to serve. *See Fe.l Election Com'n v. Beaumont,* 539 U.S. 146, 162 (2003).

The state argues that Amendment 54's ban is constitutionally valid because it has long been recognized that laws prohibiting direct corporate and union campaign contributions, such as Colorado's 2002 measure, are valid. But those enactments permit corporations and unions to make contributions through regulated political committees. Moreover, the historic ban on direct corporate and union campaign contributions "has always done further duty in protecting 'the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed.'" *Beaumont*, 539 U.S. at 154. Amendment 54 does the opposite: it penalizes individuals who serve an organization as officers or board members by not allowing them to make campaign contributions because of their association with the corporation. It turns these longstanding principles on their head.

The state also asserted that the state-wide, all levels of government ban in Amendment 54 is no different than the bans on campaign contributions under 2 U.S.C. § 441c(a) and in the Hatch Act. Section 441c(a) prohibits contributions by "any person" who enters into any personal

services or supply contract with the U.S. government to "any political party, committee, or candidate for public office or to any person for any political purpose or use." *Id.* "Any person" includes "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 U.S.C. § 431(11).

However, section 441c(a) can be easily distinguished from the bans in Amendment 54. First, 2 U.S.C. § 441c(b) – the next paragraph in the statute – allows "any corporation, labor organization, membership organization, cooperative, or corporation without capital stock" to contribute to "any separate segregated fund" for "the purpose of influencing the nomination for election, or election, of any person to Federal office." Second, the statute addresses only government procurement, land and construction contracts. And third, the statute applies only to campaign contributions to members of Congress, which controls appropriations and has oversight responsibility for federal contracts.

The Hatch Act can also be distinguished. In general, under the Hatch Act, an employee of the federal government may not engage in political activity while the employee is on duty, use his official authority to affect the result of an election, solicit political contributions or run as a candidate for election to a partisan political office. 5 U.S.C. §§ 7323-24. But an employee retains the right to make political contributions. *Id.*

In addition, the Fair Campaign Practices Act, which applies to the political activities of employees of the state and higher education institutions that have programs financed by federal funds, allows them – on their own time – to contribute to political organizations and candidates, attend political fundraising functions, and campaign for or against referendum questions. 5 U.S.C. §§ 1501-02. *See also*, C.R.S. § 24-50-132 ("Employees in the state personnel system ... shall not use any state facility or resource or the authority of any state office in support of any candidate, and shall not campaign actively for any candidate on state time or in any manner calculated to exert the influence of state employment.").

The part of Amendment 54 that bans those subject to it from contributing to ballot measure campaigns is subject to strict scrutiny. A vote for or against a ballot measure is an exercise of free speech, and "an economic contribution to a committee designed to support or oppose a ballot measure is similarly of constitutional magnitude." *Common Sense Alliance v. Davidson*, 995 P.2d 748, 756 (2000) (citing *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981)). 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." *Common Sense Alliance*, 995 P.2d at 755 (quoting *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 790 (1978)). There is "no significant state or public interest in curtailing debate and discussion of a ballot measure." *Elam Constr. v. Reg'l Transp. Dist.*, 129 F.3d 1343 (10th Cir. 1997). A limit or ban on contributions in support of or in opposition to a ballot measure must be "narrowly tailored" to advance a "compelling state interest." *Independence Inst. v. Coffman*, 2008 WL 5006531, at *10 (Colo. App. Nov. 26, 2008) (citing cases).

The Asserted State Interests

The first step in determining whether Amendment 54's burdens upon First Amendment interests are disproportionately severe in light of its legitimate objectives is understanding the state interests that are claimed to be sufficiently important to justify those burdens.

The only governmental interest identified in Amendment 54, itself, is "a presumption of impropriety between contributions to any campaign and sole source government contracts...." Section (15). A presumption, of course, is not evidence, Black's Law Dictionary 1185 (6th ed. 1990), and the State did not offer any evidence to support such a presumption. Instead, it argued that the presumption is established by the fact that it is contained in Amendment 54, which was passed by the voters. This reasoning is circular and it is too much of a stretch to interpret the passage of the amendment as a popular endorsement of the existence of a presumption of impropriety. Even if the court were to accept such reasoning, however, a presumption of impropriety is not a governmental interest of sufficient importance to justify any burdens on First Amendment freedoms, much less the substantial burdens embodied in Amendment 54. As far as the court has been able to determine, no case has ever held that a presumption of anything constitutes adequate justification for burdens on free speech and association. As the United States Supreme Court held in *Nixon v. Shrink Missouri Gov't,* 528 U.S. 377, 392 (2000), "[w]e have never accepted mere conjecture as adequate to carry a First Amendment burden...."

To understand the inadequacy of a presumption of impropriety as a justification for Amendment 54's burdens, it is helpful to compare justifications that courts have found to be sufficient in other cases. The prevention of "corruption" or the "appearance or perception of corruption" has been found to be a sufficiently important state interest to support some limitations on campaign contributions. *See Randall*, 548 U.S. at 261; *McConnell,* 540 U.S. at 143-44; *Buckley*, 424 U.S. at 26-27. Reasonable limitations on the amount of contributions and requiring corporations and unions to make campaign contributions through regulated political committees have been upheld with relatively little evidentiary showing of a particular problem with corruption, although all of the cases involved real evidentiary showings that such problems did exist in the jurisdiction at issue. More stringent restrictions have been upheld upon stronger evidentiary showings of particular problems with corruption in the affected jurisdiction. *See, e.g., Green Party v. Garfield,* 590 F. Supp.2d 288 (D.Conn. 2008)(substantial evidence of "a string of corruption scandals involving state officials," including criminal convictions of the governor and state treasurer, supported ban of contributions by state contractors to candidates for state office). As with other aspects of the analysis, balancing and proportionality are key. "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Nixon,* 528 U.S. at 391. Presumption of impropriety is an entirely novel justification for a burden on free speech and association and no evidence at all was offered to support it.

Amendment 54's reliance on a "presumption of impropriety" compares unfavorably with the "Purpose and Findings" section of Colorado's 2002 campaign finance amendment: "The people of the state of Colorado hereby find and declare that *large* campaign contributions to political candidates create the *potential for corruption* and the *appearance of corruption*...." *Colo. Const. Art. XXVIII §1 (emphasis added).* Happily, the 2002 and 2008 enactments appear to confirm what the parties agreed upon: Colorado does not suffer from any actual corruption problem.

The 2008 State Ballot Information Booklet ("the Blue Book"), while not listing the prevention of "corruption" or the "perception of corruption" as interests to be served by the amendment, does state under the heading, "Arguments For," that "Amendment 54 promotes civic trust and government transparency." In its *Amicus Response to Ritchie Motion for Preliminary Injunction, at 1,* Clean Government Colorado stated, "[t]he intent of the Amendment is to assure the voters of Colorado that no-bid contract holders are not influencing elections in order to secure their own contracts with governmental entities. The problem addressed is the perception that there is a club of insiders consisting of businessmen and politicians they support, otherwise known as 'pay-to-play' – to play in the game of governmental contracts, one must ante up for a seat at the table."

At the hearing, all parties agreed that preventing the corrupt influence of decision makers with authority over sole source government contract awards was the core state interest that Amendment 54 was intended to serve. The court agrees that this is the fair and reasonable conclusion to draw from the amendment as a whole, although it is not expressly stated and no evidence was presented showing that there is any perceived or actual corruption problem in Colorado, concerning government contracts or otherwise. The question then becomes whether Amendment 54 is closely drawn to match this interest, or whether the burdens it imposes upon First Amendment interests are disproportionately severe in light of this legitimate objective.

In examining the asserted state interest served by Amendment 54 and determining whether it justifies the amendment's burdens on First Amendment interests, it is important to consider the state of the law in this area before its passage. The size of campaign contributions in Colorado is already restricted to relatively modest amounts to prevent undue influence by those able to make large contributions. *See* Colo. Const. Art. XXVIII, §§ 1 and 3. Contributions through "conduits" or with the expectation of reimbursement by another are also forbidden. In addition, Colorado's rules of conduct for all public officers, members of the general assembly, local government officials and employees forbid the acceptance of a "gift of substantial value" that "would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties" or that he knows or a reasonable person in his position should know "is primarily for the purpose of rewarding him for official action he has taken." C.R.S. § 24-18-104(1)(b)(I) and (II). A public officer or state employee shall not "[a]ssist any person for a fee or other compensation in obtaining any contract ... from his agency." C.R.S. § 24-18-108; *see also* C.R.S. § 24-18-201, and the bribery and corrupt influences statutes. C.R.S. §§ 18-8-301 and -302.

Legal Standard Applicable to a Facial Constitutional Challenge

Because the court is deciding a facial challenge to the constitutionality of Amendment 54, the substantive First Amendment principles, set forth above, must be viewed through the lens of the principles applicable to facial challenges. The parties agree, correctly, that Amendment 54 is facially unconstitutional if a substantial number of its applications are overbroad in relation to its plainly legitimate sweep. *Wash. State Grange v. Wash. State Republican Party*, 128 S.Ct. 1184, 1190 (2008). Amendment 54's plainly legitimate sweep is preventing the corrupt influence of officials who make decisions about sole source government contract awards. The court concludes that a substantial number of Amendment 54's applications are overbroad in relation to the amendment's plainly legitimate sweep. Indeed, Amendment 54 is so overbroad that it has substantially slipped the moorings of its justification.

Amendment 54's Provision Concerning Contributions to Ballot Measures is Unconstitutional.

Amendment 54 provides that any person who makes "any contribution intended to promote or influence the result of an election on a ballot issue shall not be qualified to enter into a sole source government contract relating to that particular ballot issue." Section (17(2). A ban on contributions to ballot measures must be narrowly tailored to advance a compelling state interest. *Common Sense Alliance*, 995 P.2d at 755.

The United States Court of Appeals for the Tenth Circuit upheld a preliminary injunction in a case similar to the instant one. *Elam Constr. v. Reg'l Transp. Dist.*, 129 F.3d 1343 (10th Cir. 1997). The case involved a Regional Transportation District ("RTD") board resolution not to enter into contracts with entities that had contributed more than $100 to a campaign seeking to affect the outcome of a "Guide the Ride" referendum to increase the district's sales tax. The Tenth Circuit ruled that the plaintiffs, construction companies that might lose contracts with RTD, were likely to succeed on the merits and that allowing the resolution to stay in effect would chill their First Amendment rights of political speech and association. *Id.* at 1347.

In *Elam,* the court relied on *Citizens Against Rent Control*, 454 U.S. at 293, where the Supreme Court ruled unconstitutional a municipal ordinance that placed a $250 limitation on contributions to committees formed to support or oppose ballot referenda because "there is no significant state or public interest in curtailing debate and discussion of a ballot measure." *Id.* The Tenth Circuit observed that the outcome of the referendum will not directly affect the composition of the RTD board, or the compensation of its members, which is fixed by statute. *Id.* Therefore, the court concluded that "RTD's asserted interest in preventing corruption, in light of its use of an impermissible restriction on speech, does not outweigh the harm asserted by plaintiffs." *Id.*

Amendment 54's Ban on Contributions to Candidates and Political Parties is Unconstitutional.

The provisions of Amendment 54 fail in several different dimensions to closely match a sufficiently important state interest. In determining whether its provisions are overbroad, important considerations include its use of contribution bans, rather than dollar limitations (which already exist in Colorado law), the absence of any evidence of a corruption problem in Colorado that might justify greater burdens on free speech, and the very severe sanctions imposed for violations of Amendment 54. The "match" between its legitimate objective and most of its provisions is far from "closely drawn."

Amendment 54 is overbroad in the following major respects, among others.

It bars those subject to it from contributing, not only to candidates for offices with decision making authority over their contracts, but to *any* candidate for *any* office at *any* level of government *anywhere* in Colorado, and to political parties. This means that a lawyer, for example, with a no-bid contract for legal services with a special district in Durango could not contribute to candidates for a school board election in Grand Junction, or to candidates for the state legislature, or governor, or attorney general, or to any political party. The connection between the breadth of this ban and its legitimate objective is not merely insufficiently close, it is indiscernible. The state attempted to justify this sweeping ban by arguing that there are interlocking relationships between and among different levels of government and the *amicus* argued it is meant to prevent a contribution to one candidate or party from being funneled, or "wheeled," to another candidate. There was no evidence presented of any such problem in Colorado and direct questioning at oral argument failed to yield a single example of how such a problem might present itself. Moreover, Article XXVIII already forbids earmarking contributions to political parties for pass through to particular candidates and forbids one candidate committee from making any contribution to, or accepting any contribution from, another candidate committee. Section 3(c) and (6).

It defines sole source contract far more broadly than the normal meaning of that term and in such a way that it subjects to its sweeping ban on campaign contributions those who have government contracts that are not appropriate for competitive bidding, and even those whose contracts could not be competitively bid. The state argued that the court could interpret Amendment 54 as not applying to contracts that cannot be competitively bid. The problem with this suggestion is that the Blue Book makes it clear that such contracts are intended to be covered by Amendment 54: it lists as examples of no-bid contracts, cases "where equipment, accessories, or replacement parts must be compatible; where a sole supplier's item is needed for trial use or testing; and where public utility services are to be purchased." Holders of contracts like this cannot make any campaign or party contributions, though they pose no risk of corrupt influence of public officials.

Moreover, its scope is far reaching. It includes all no-bid contracts entered into by the State of Colorado, Colorado's 62 counties, 269 cities and towns, 178 school districts, political

subdivisions of the state, more than 3000 special districts and "any public and quasi-public body that receives a majority of its funding from the taxpayers of the state of Colorado."

It subjects to its sweeping contribution ban not only persons or entities that have a no-bid contract with the government, but also the contracting party's officers, directors, trustees and anyone who owns or controls ten percent or more of the contracting party. It applies equally to individuals associated with profit-motivated businesses and those associated with charitable entities. Thus, a board member of the DCPA or Children's Hospital, or any number of charitable organizations which have no-bid contracts with local governments to provide specialty facilities or services must choose between the exercise of his or her First Amendment rights and continuing to perform the important community service of serving on nonprofit boards. If s/he remains on the charity board, s/he cannot contribute to any political campaign at any level of government anywhere in the state. The application of Amendment 54's broad ban on contributions to individuals associated with a contractor imposes burdens on those individuals' First Amendment freedoms that are disproportionately severe and cannot fairly be said to closely match the objective of preventing corrupt influence of public officials.

It burdens the First Amendment interests of "immediate family members" of contract holders, under a truly Orwellian definition of "immediate family members": "any spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian or domestic partner." The U.S. Supreme Court has rejected the extension of a ban on campaign contributions to family members other than the spouse of a would-be contributor. *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 124 S.Ct. 619, 711 (2003) (government justification for ban on campaign contributions from children younger than 18 years as preventing "corruption by conduit" was "simply too attenuated for [the ban] to withstand heightened scrutiny"). The court noted "that the Government offers scant evidence of this form of evasion," and suggested that the slim evidence is a result of the deterrence in 2 U.S.C. § 441f, "which prohibits any person from 'mak[ing] a contribution in the name of another person' or 'knowingly accept[ing] a contribution made by one person in the name of another.'" *Id.*

The state argues that family members are not subject to the ban on contributions unless they make contributions "on behalf of" the contract holder, acting as conduits to circumvent the direct ban on contributions by the contract holder. If all that was intended was a ban on contributions "by or on behalf of" contract holders, it would have been easy to say so in clearly limiting language. The court cannot discern such limited intent in the extraordinarily broadly worded operative language: "contract holders shall contractually agree…to cease making, causing to be made, or inducing *by any means,* a contribution, *directly or indirectly, on behalf of* the contract holder *or on behalf of his or her immediate family member* and *for the benefit of* any political party or *for the benefit of* any candidate for any elected office of the state or any of its political subdivisions." (Emphasis added.) A contribution "by" a family member would be a contribution "on behalf of" that family member. Inducing by any means, directly or indirectly, would include soliciting or even encouraging a family member to make a contribution. The severe penalties for violating Amendment 54 (discussed below), coupled with this vague and

comprehensive language of prohibition, will chill the First Amendment freedoms of the extended family members of the broadly defined contract holders. Indeed, the evidence presented to the court shows that it has already had this chilling effect. Even the state admits that if a contract holder, such as Mr. Brown, runs for office, Amendment 54 renders illegal any contributions to his own campaign by himself or by his family members. As Mr. Fitzgerald testified, contributions from family members are very important to candidates in local races, such as his race for city council. The provision of Amendment 54 concerning extended family members cannot fairly be said to closely match its legitimate objective; the burden on the First Amendment interests of the many family members of contract holders, officers, board members and shareholders, is plainly disproportionately severe.

The penalties for violations of Amendment 54 are disproportionately harsh in comparison to penalties in other campaign contribution limitation measures, which greatly exacerbates its chilling effect. For example, if an extended family member of a board member of a contract holder were to make a forbidden contribution, they would be barred from holding any sole source government contract *or public employment* with any level of government for three years. Violators, including bookkeepers who fail to report violations within ten days, are liable for restitution, including the cost of replacing the offending contract holder's contract with another. Those who accept prohibited contributions are declared by Amendment 54 to have "engaged in corrupt misconduct," a serious blow to the reputation of anyone, let alone anyone running for public office. If the violation is "knowing," it is grounds for removing the official from office and disqualifying him/her from ever holding "any office of honor, trust or profit in the state, and shall constitute misconduct or malfeasance." The enforcement mechanism is a lawsuit in district court by any registered voter in the state.

In sharp contrast, Article XXVIII before Amendment 54 penalized forbidden campaign contributions and expenditures with proportionate fines of two to five times the amount of the offending contribution or expenditure, and provided for enforcement through the Secretary of State's office. It also provided that "[f]ailure to comply with the provision of this article shall have no effect on the validity of any election." Also in contrast, the so-called "pay-to-play" statutes in other states enforce their provisions, which do not approach the harshness of Amendment 54's penalties, through ethics commissions. *See* Conn. Gen. Stat. §9-333n(g); HI Rev. Stat. §11-205.5; KRS §121.056, §121.330; N.J. Perm. Stat. §19.44A-20.13; ORC Ann. 3517.093, 3517.13, and 3517.992; S.C. Code Ann. §8-13-1342; W.Va. Code §3-8-12. The federal campaign finance laws are enforced through the Federal Ethics Commission.

Amendment 54's scheme of harsh penalties and freewheeling enforcement mechanism appears designed to maximize its chilling effect on the exercise of free speech and association through political contributions by anyone even remotely connected to a government contractor. This is the opposite of what the First Amendment requires of it.

Because these overbroad applications permeate the amendment, the entire amendment is unconstitutional on its face. At oral argument, the court explored with able counsel for all parties the possibility of curing the constitutional infirmities of Amendment 54 by a narrowing judicial

construction. However, a court has an obligation to avoid judicial legislation, *U.S. v. Nat'l Treas. Employees Union,* 513 U.S. 454, 479 (1995), and the court is satisfied that narrowing Amendment 54 to a constitutional scope would require an impermissible wholesale judicial rewrite.

The court determines that the plaintiffs have a high likelihood of succeeding on the merits of their claim that Amendment 54 is facially overbroad.

The court has struggled with whether section 16 of the amendment, which creates a state list of all sole source government contracts with detailed information about each, should be severed and allowed to stand on its own. On the one hand, the only overbreadth it suffers from is the very broad definition of sole source government contract, transparency is a listed purpose in the Blue Book and section 16 does not burden free speech interests. On the other hand, by its own language, it is included in Amendment 54 only "to aid in enforcement of this measure...." Thus, it was not intended to have any life of its own and the court's ruling regarding the rest of the amendment leaves nothing to enforce. Balancing these considerations, and giving deference to the fact that transparency is a listed purpose of Amendment 54 in the Blue Book, upon which the electorate relied in passing the amendment, the court determines that section 16 is closely drawn to serve the important state interest of transparency in government contracting and excepts it from the operation of this preliminary injunction.

Amendment 54 is Unconstitutionally Vague.

The First Amendment demands "specificity in a law so that individuals may assess the burden on their rights to free speech and free association and make informed decisions before acting." *Id.* (citing *Common Sense Alliance,* 995 P.2d at 756). A vagueness analysis under the First Amendment is, therefore, stricter than a vagueness analysis under the Due Process Clause. *Independence Inst.*, 2008 WL 5006531, at *4 (citing *Parrish v. Lamm*, 758 P.2d 1356, 1366 (Colo. 1988)).

The language, "to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions" in section 15 is impermissibly vague.

One cannot assess whether "contribution" is limited to financial contributions or whether it includes in-kind contributions and volunteer activities. It is also unclear whether contribution includes an "independent expenditure." The state asserts that the exclusion of volunteer time from the definition of campaign contribution in Art. XXVIII, § 5(b), means that a contract holder may volunteer for a campaign; and the failure to exclude independent expenditures from that definition means that independent expenditures are covered. The state, however, is not consistent in its use of Article XXVIII's definition of campaign contribution. The state asserts

that even though the definition of contribution includes "[a]nything of value given," the reference to "amounts" in section 14.4 limits Amendment 54's definition of contributions to financial contributions. The number of inconsistencies between the language in Amendment 54 and the earlier-adopted definition of "contribution" does not contribute to clarity.

Moreover, one cannot assess whether "causing to be made, or inducing by any means" an "indirect" contribution includes solicitation of financial contributions in support of a candidate or a ballot measure. A ban on solicitation of contributions of contributions is a direct restraint on speech. *Green Party v. Garfield, 590 F. Supp. 288 (D.Conn. 2008).*

If the language "on behalf of the contract holder" and "on behalf of his or her immediate family member" in section 15 means anything more than the common sense meaning "by or for the contract holder" and "by or for his or her immediate family member," the phrase is not defined. Similarly, if the language "for the benefit of any political party" and "for the benefit of any candidate" in section 15 means anything more than the common sense meaning "to any political party" and "to any candidate," the phrase is not defined.

Section 17(2) also penalizes any person who accepts a contribution "on behalf of a candidate committee, political committee, small donor committee, political party or other entity." "Other entity" is not defined, and its inclusion in the list of prohibited contributors is impermissibly vague. Moreover, the list of entities to be penalized includes entities that are not listed in section 15, which specifies that the contract holder is not to make contributions "for the benefit of any political party or for the benefit of any candidate." This expanded list of prohibited recipients in the penalty section highlights the vagueness of the prohibition language in section 15. In order to be clear, they should match. In addition, "intentionally" and "knowing" in sections 17(3) and (4) appear to refer to violation of the statute rather than to discrete acts, making the operation of the statute vague.

The vagueness of Amendment 54 does not allow those subject to it to assess the burden on their rights to free speech and free association and make informed decisions before acting. Therefore, the amendment is unconstitutionally vague.

Accordingly, the plaintiffs have demonstrated a reasonable likelihood of success on their claim that Amendment 54 is vague, thus violating the First Amendment.

Constitutional Claims of the Dallman Plaintiffs

This section addresses issues that relate only to the claims of the Dallman Group of Plaintiffs, who are all related to public sector unions. Most of the constitutional infirmities identified above also apply to Amendment 54 as it relates to public sector unions, and will not be repeated. The exceptions are that officers, directors and trustees of unions are not included in the definition of "contract holder," and because individuals associated with unions are not contract holders, family members of individuals are not affected.

The $100,000 Threshold is not Applicable to Public Sector Unions' Collective Bargaining Agreements.

Amendment 54 defines the term "sole source government contract" as:

> [A]ny government contract that does not use a public and competitive bidding process soliciting at least three bids prior to awarding the contract. This provision applies only to government contracts awarded by the state or any of its political subdivisions for amounts greater than one hundred thousand dollars . . . . A sole source government contract includes collective bargaining agreements with a labor organization representing employees, but not employment contracts with individual employees. Collective bargaining agreements qualify as sole source government contracts if the contract confers an exclusive representative status to bind all employees to accept the terms and conditions of the contract.

Under the Amendment, any collective bargaining agreement with a state or local government entity constitutes a "sole source government contract" for purposes of the Amendment. The designation is not contingent upon a contract amount that exceeds $100,000, as is the case with all other sole source government contracts. Therefore, the $100,000 threshold does not apply to collective bargaining agreements. Because the language is clear, there is no need to "resort to rules of construction to construe its meaning." *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208, 1211 (Colo. 1996).

Accordingly, the Dallman Plaintiffs have not demonstrated a reasonable probability of success on the merits of their claim for a declaratory judgment that the $100,000 threshold applies to collective bargaining agreements.

Amendment 54's Ban on Contributions by Public Sector Unions and their Political Committees is Unconstitutional.

"The First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas," in recognition of the fact that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (citations omitted).

With regard to unions in particular, the Colorado Supreme Court has recognized that "[r]estrictions on contributions and expenditures by labor organizations" impinge on the First Amendment rights of unions and their members to free speech and free association "because they impose burdens on individuals acting together to amplify their speech." *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 76 (Colo. 2007). Inasmuch as "[t]he guarantee of freedom of association in the political context protects the right of union members both to express their point of view and to support their position financially," it follows that "[l]aws banning union contributions and

expenditures impinge upon union members' associational freedom by preventing them from supporting candidates collectively through the union." *Id.* (citation omitted).

The inclusion of public sector collective bargaining agreements within the definition of sole source government contracts is curious and problematic; they simply do not fit formally or functionally with the rest of the amendment or its asserted state interests. There is no evidence of any real or perceived threat of corrupt influence of public officials with authority over the award of collective bargaining agreements. Collective bargaining agreements are fundamentally different from sole source government contracts for goods or services. Unlike the typical procurement context—in which a government entity is free to contract with any number of competing companies, and a putative contractor therefore might offer campaign contributions to ensure that it, rather than one of its competitors, will be selected—in the collective bargaining setting, it is the *employees*, not the employer, who select the union with which the governmental entity will deal. *See Littleton Educ. Ass'n v. Arapahoe County School District, No. 6*, 533 P.2d 793, 796 (1976). Before a union can even begin to engage in collective bargaining with a public employer, it must demonstrate, usually through an election, that a majority of employees in a designated bargaining unit have chosen the union as their collective bargaining representative. Thus, collective bargaining agreements, unlike sole source procurement contracts, are not "awarded" to a union through a choice made by government officials, and any candidate contributions by a union cannot affect whether or not a particular union is chosen as the representative of the employees.

When a public employer negotiates a collective bargaining agreement with a union that is recognized as the exclusive representative of its employees, there is no departure from any norm of competitive bidding. Public employers do not solicit "bids" from competing unions for the "award" of a collective bargaining agreement, because the employer deals exclusively with the employee representative chosen by its employees. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 220-21 (1977). In addition, whereas the benefits of a sole source procurement contract flow to the contract holder itself, the beneficiaries of a collective bargaining agreement are the represented employees, not the union that negotiated the agreement, or even just the members of the union. In negotiating a collective bargaining agreement, a union is under a duty to represent all unit employees fairly, regardless of whether they are members of the union.

Finally, unlike a business, which can avoid the prohibitions of Amendment 54 by refraining from sole source contracting, a public employee union cannot escape Amendment 54's contribution ban, except by refraining from fulfilling its basic mission: the exclusive representation of public employees. Amendment 54 forces affected unions to choose between the two main reasons that its members associate (collective bargaining and collective political voice) and to fulfill only one of those purposes. As the state admitted at oral argument, unlike all other affected contract holders, public sector unions and their political committees are banned from making any political contributions in the state because of what they are rather than because of what they do. There is *no* legitimate state interest to support this application of Amendment 54. Even if one could be found, the burdens of this application upon the union members' First Amendment interests are clearly disproportionately severe. Because of the incongruence

between the mischief Amendment 54 is supposed to address and the means it employs, the prohibition against contributions by public sector unions and their political committees is not closely drawn to match an important government interest.

Where the United States Supreme Court has upheld statutes prohibiting particular types of organizations from making direct political contributions, the Court has emphasized that the organization in question remained free to participate in the political process by making contributions through its political action committee. *See Beaumont*, 539 U.S. at 163; *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990). The government's asserted interests cannot justify the amendment's coverage of union-sponsored political committees. The state argues that union members can still contribute through their small donor committees. The court does not agree. A small donor committee is a type of political committee, and Amendment 54's definition of "contract holder" includes, "the labor organization and *any political committees* created or controlled by the labor organization...." (Emphasis added.) Political committees of corporate contract holders are not included in the definition of contract holder.

Amendment 54 violates the First Amendment's guarantee of free speech and the Fourteenth Amendment's guarantee of equal protection by prohibiting political contributions by "any political committee created or controlled by" a covered union, while not prohibiting political contributions by political committees that are created or controlled by businesses and other persons or non-union entities that enter into "sole source government contracts."

Amendment 54's discriminatory treatment of public sector unions is reviewed under strict scrutiny. *Austin*, 494 U.S. at 666 ("Because the right to engage in political expression is fundamental to our constitutional system, statutory classifications impinging upon that right must be narrowly tailored to serve a compelling governmental interest"); *Carey v. Brown*, 447 U.S. 455, 465 (1980) ("When government regulation discriminates among speech-related activities ..., the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized"). This part of Amendment 54 would also fail equal protection analysis even if it is reviewed under the more relaxed "exacting scrutiny" standard.

There is simply no legitimate reason for the government to impose greater restrictions on the first amendment interests of public sector unions than it imposes upon other entities that qualify as holders of "sole source government contracts." The inclusion of public sector unions in Amendment 54 in a way that leaves them no way out, exempting them from the $100,000 threshold applicable to all others, and banning contributions from their political committees compels the conclusion that the treatment of public sector unions by Amendment 54 is not content neutral. The Amendment's treatment of public sector unions fails under either strict or intermediate scrutiny.

Accordingly, the Dallman Plaintiffs have demonstrated a strong likelihood of success on their claim that Amendment 54 violates the First and Fourteenth Amendments of the United States Constitution.

Danger of real, immediate, and irreparable harm.

The plaintiffs must demonstrate a danger of real, immediate, and irreparable harm, if the Court does not grant the preliminary injunction. *Sanger*, 148 P.3d at 409. "Irreparable harm" means "certain and imminent harm for which a monetary award does not adequately compensate." *Gitlitz v. Bellock*, 171 P.3d 1274, 1279 (Colo. App. 2007). "[W]here monetary damages are difficult to ascertain or where there exists no certain pecuniary standard for the measurement of damages," Colorado courts will find irreparable harm. *Id.*

Even a temporary deprivation of First Amendment rights constitutes irreparable harm. *See Free Speech Coal. v. Gonzales*, 406 F.Supp.2d 1196, 1210 (D.Colo. 2005), citing *Elrod v. Burns*, 427 U.S. 347 (1969) (the loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury). The infringement of the plaintiffs' rights (as well as those of thousands of other Coloradans) to free speech and association is on-going and will continue if an injunction is not entered.

No adequate remedy at law.

For the court to issue a preliminary injunction, the plaintiffs must demonstrate that they have "no plain, speedy, and adequate remedy at law." *Sanger*, 148 P.3d at 409. Injunctive relief is the sole remedy to protect the plaintiffs' freedom of speech and association. Plaintiffs have no choice other than to comply with the ban on political contributions or to give up, or induce their organizations to give up, what Amendment 54 broadly defines as "sole source governmental contracts," or, as to public sector unions, cease performing their central function of representing employees in negotiations with their employers. Consequently, the issuance of a preliminary injunction is the plaintiffs' only adequate remedy.

Public interest favors granting the relief.

The plaintiffs must demonstrate that it is in the public interest for the Court to grant the preliminary injunction. *Sanger*, 148 P.3d at 409. Here, a narrow majority voted for Amendment 54, and there have been wide-spread, apparently unintended, consequences. An injunction will protect the free speech and association rights of thousands of Coloradans. Such protection of First Amendment rights is plainly in the public interest, particularly since the November, 2009 elections are rapidly approaching and the public interest is served by more debate about the issues of the day, not less. An injunction will also protect the public's interest in the ability of nonprofit organizations, such as the DCPA, Children's Hospital and the University of Denver, to attract and retain community leaders to serve as board members.

Balance of equities favors the relief sought.

The plaintiffs must demonstrate that the balance of equities favors the Court's issuance of a preliminary injunction. *Sanger*, 148 P.3d at 409. If the operation of Amendment 54 is not

enjoined, the First Amendment rights of thousands of Coloradans will be infringed. If the operation of Amendment 54 is enjoined, pre-existing Colorado law, including the rest of Article XXVIII, will continue to protect the public from any corrupt influence of campaign contributions on government contracting, bearing in mind that there is no evidence of such actual or perceived corruption. Further, "since plaintiffs' fundamental First Amendment rights are at stake, it is clear that their threatened injury outweighs whatever speculative damage the proposed injunction may cause defendants." *Million Man March*, 922 F.Supp. at 1500-01; *accord*, *Elam Construction*, 980 F.Supp. at 1423. The balance of equities favors granting a preliminary injunction.

An Injunction will preserve the status quo.

Finally, the plaintiffs must demonstrate that the Court's issuance of a preliminary injunction will preserve the status quo. *Sanger*, 148 P.3d at 409. Individuals, corporate entities and unions in Colorado have been able to contribute to political campaigns at all levels of government, subject to existing restrictions on the size of contributions, to the requirement that contributions by corporations and unions be made through political committees, and other reasonable regulations. Additionally, "[t]he appropriate status quo in a situation like this" – the imposition of new restrictions impacting participation in the political process – "is the status quo *ante*, that is the status quo before the rule was enacted." *Sanger v. Dennis*, 148 P.3d 408, 419 (Colo. App. 2006). An injunction will preserve the status quo.

ORDER

The Court determines that the plaintiffs have met their burden of proving beyond a reasonable doubt that Amendment 54 is unconstitutional and of justifying the issuance of a preliminary injunction.

THEREFORE, the Court enjoins the enforcement of Amendment 54 (except section 16 thereof) because, on its face, it violates the rights of free speech and association guaranteed by the First Amendment to the Constitution of the United States.

Done this 17th day of July, 2009, *nunc pro tunc* June 23, 2009.

BY THE COURT

Catherine A. Lemon
District Court Judge

Stratford Shields
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Morgan Stanley

July 30, 2009

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

Re: MSRB Notice 2009-35 – Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions

Dear Ms. Carey:

I appreciate the opportunity to comment on MSRB Notice 2009-35, which proposes disclosure of certain contributions to municipal bond ballot campaigns. I have previously been a signatory to letters on this topic, and I laud the Board for taking this positive first step in requiring such disclosure.

While the proposal parallels the disclosure required by Rule G-37 for political contributions, it does not carry the corresponding ban on engaging in municipal securities business in a particular jurisdiction if a prohibited contribution is made. I believe the Board should take the requirements further to include a similar ban on underwriting municipal business for non-de minimus bond ballot contributions. When an underwriter contributes to a bond ballot campaign and is then selected for the resulting negotiated underwriting, it serves to foster the appearance of pay-to-play in our marketplace. Morgan Stanley as a firm made the decision to discontinue municipal bond ballot contributions and continues to advocate an industry wide solution.

Thank you for considering my comments in support of enhanced disclosure and further action to increase transparency and further level the playing field for the municipal marketplace.

Sincerely,

Stratford Shields

Stratford Shields
Managing Director
Head of Public Finance

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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:

Difference Between Political Contributions and Bond Election Contributions – 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.

Bond Election Contributions Benefit Clients – 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.

Regulation Can be Done at the Local Level – 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.

Assuring Consistency in Rule Applicability – 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
Head of Public Finance Services

Rebecca Lawrence
Assistant General Counsel

RBDA | 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

August 7, 2009

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

Re: MSRB Notice 2009-35: Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions

Dear Ms. Carey:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2009-35[2] 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 on political contributions and prohibitions on municipal securities business, specifically related to bond ballot campaign committee contributions. SIFMA supports these proposed changes to Rule G-37.

Municipal Securities Dealers Leaders in Limits on "Pay to Play"

Beginning with the "voluntary initiative" entered into by municipal securities broker dealers in 1993, upon which the 1994 adoption of MSRB Rule G-37 was based, SIFMA[3] and its member broker dealer firms have been leaders in the adoption of "pay to play" restrictions and regulations in the municipal securities business. For the past 15 years, municipal securities

[1] 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.

[2] MSRB Notice 2009-35 (June 22, 2009).

[3] The term SIFMA includes reference to its predecessor firms, including The Bond Market Association and the Public Securities Association.

broker dealers have been held to stricter "pay to play" standards than any other participant in the municipal securities industry or any other participant in any industry. Municipal securities broker dealers are held not only to the strict standards of MSRB Rule G-37, but also to a myriad of state and local "pay to play" laws that prohibit municipal securities broker dealers from engaging in municipal securities business with issuers if certain political contributions are made. In summary, current rule 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, any municipal finance professional associated with the firm, or a political action committee controlled by the firm.[4]

Bond Ballot Campaign Committee Contributions

Generally, bond ballot campaign committees are created to support a ballot measure before voters to approve a specific municipal securities borrowing. Bond ballot campaign committees vary in prevalence across different jurisdictions. Bond ballot campaign committees raise funds for legitimate purposes, such as to disseminate information to voters about the purpose and benefits of the proposed debt, the costs of the proposed debt to taxpayers and otherwise support bond ballot measures. In certain jurisdictions, bond ballot campaign committees are a key part of the political process in authorizing the issuance of bonds to finance public projects. The type of bond ballot measures these campaigns support varies across different jurisdictions, although ballot measure campaign committees for school bonds and transportation bonds appear to be the most common.

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 and maintaining municipal securities business. There are no uniform disclosure methodologies or transparency vehicles for bond ballot measure campaign contributions across the various state and local jurisdictions that may have bond ballot measures. SIFMA supports uniform disclosure of bond ballot campaign committee contributions to the MSRB through the Rule G-37 process. SIFMA feels that the transparency this rule change will create would reap benefits that outweigh any additional compliance burdens and costs for the municipal securities broker dealer community. SIFMA believes that any in-kind contributions that a firm pays for on behalf of a committee, such as polling services and other outside election consultants, should be treated the same as cash contributions for the purposes of the rule. SIFMA does not believe, however, that the use of in-house resources should be reported, because the valuation of these resources may be very difficult to ascertain, and the services may overlap and be confused with traditional investment banking services provided. The Rule G-37 changes as currently proposed serve the goal of transparency, and specific disclosure regarding whether a specific item of business is related to a prior contribution is unnecessary. SIFMA also feels that

[4] 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 entitle to vote.

expanding Rule G-37 to require identification of the person requesting the contribution is overbroad, and that the material issue relates to the transparency of actual contributions made. Finally, SIFMA not only supports this proposed rule change, but also recommends that MRSB consider concomitant revisions to Rule G-8, on recordkeeping.

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", and as such support this proposed rule change. We note, if this rule change is adopted, municipal securities broker dealers will be taking yet another step ahead of other industries that provide goods and services to state and local governments to halt any 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.

Respectfully,

Leslie M. Norwood,
Managing Director
and Associate General Counsel

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

STONE &
YOUNGBERG

Kenneth E. Williams
President
Chief Executive Officer

August 13, 2009

Ms. Leslie Carey
Associate General Council
Municipal Securities Rulemaking Board
1900 Duke Street, Ste 600
Alexandria, VA 22314

Dear Ms. Carey,

I am aware that this letter is arriving after the end of your comment period, but after giving the proposed changes to G-37 regarding bond referendums further thought, I felt compelled to write this letter.

Many public schools districts have parent run charitable organizations that support schools with fund raising, and many municipal finance professionals as well as firms in the municipal business donate to those organizations. There are banks in the municipal business that, as a general practice, make grants to schools or donate to the charities that give support to those schools. Those same banks often have as part of their good corporate citizenship policies, a practice of supporting local activities in communities. Some of these practices are volunteering to help in community events. Some are grants given to school districts. Are you going to ask those entities to report the fair value of any volunteering they do for issuers or potential issuers? Are you going to ask for a disclosure of every grant made to a school district by a bank in the municipal business? While these may not have a direct connection to a particular business opportunity (G-37 doesn't allow a MFP to do indirectly what they cannot do directly), clearly it is one way of gaining favor with issuers that gives large institutions an advantage when talking with those communities or schools about financings. There are many individuals in the municipal business that make contributions to annual fund raising campaigns or capital campaigns of private schools, colleges and hospitals. Some of those contributions are significant in size. Should those contributions be deemed a way of gaining a business advantage?

There are many ways municipal finance professionals or firms in the municipal business can appear to curry favor with issuers that are perfectly legitimate. The proposal to disclose bond referendum campaign contributions may seem a way to keep in check the appearance of impropriety in the municipal marketplace, but until the board decides to ask for disclosure or ban ALL contributions of time or money, including grants, that are given by any employee at banks and broker dealer firms to entities that issue municipal

bonds, the rules will continue to favor certain participants in the municipal finance business over others

I've enclosed a copy of the Charitable Contribution guidelines for California, as printed from the website of a major commercial bank that is active in municipal finance. These guidelines cover the areas of Community Development, Education and Human Services. I hope you will find it as interesting as I did.

Sincerely,

Ken Williams

Cc: Lynnette Hotchkiss

California Guidelines

Starting as far back as the mid-1800's, Wells Fargo served communities in California by bringing settlers, safeguarding the arrival of their valuables, and delivering their mail. Today, Wells Fargo continues to serve the community through its broad range community support programs, including Wells Fargo contributions.

In addition to our programs which offer financial support, Wells Fargo has built an internal culture of giving back to our communities through the promotion of volunteerism among our team members.

While we make grants in three primary areas: Community Development, Education, and Human Services, we are also supportive of those nonprofit agencies for which Wells Fargo team members have made a commitment to volunteer via direct service or through committee or Board membership.

Where we direct our contributions
Wells Fargo makes grants in three primary areas:

- **Community Development**

  Wells Fargo provides grants to organizations that help people and communities of low and moderate income in the areas of:

  - Affordable housing
  - Training people to find and retain jobs
  - Community revitalization and stabilization

  In addition, Wells Fargo promotes economic development by financing small businesses and farms that have gross annual income of $1 million or less or meet the size eligibility standards for the SBA's Development Company Program.

- **Education**

  Wells Fargo supports educational programs promoting academic achievement by low- to moderate-income students in pre-Kindergarten through the twelfth grade in the key areas of:

  - Math and science
  - Literacy
  - History of the American West

  Grant applications from educational institutions and non-profits serving those institutions are considered. Grants are also considered for:

  - Staff development of teachers and administrators serving low- and moderate-income students
  - Programs that encourage school partnerships with parents and guardians, the business community, or

the community in which the school is located

- **Human Services**

  Wells Fargo considers support of social and human service organizations whose work primarily serves low- and moderate-income populations in the following areas:

  - Child care
  - Health services and education
  - Assistance with basic needs

Requests we will not consider

- Individuals, including scholarship or fellowship assistance
- For-profit entities, including start-up businesses
- Political, labor, religious, or fraternal activities
- Endowments
- Film or video projects, including documentaries
- Travel, including student trips or tours
- Promotional merchandise
- Organizations other than IRS 501(c)(3), governmental, or tribal entities

Requests that receive low priority

- Equipment, including computer hardware and software
- Sports or athletic groups or activities
- Hospitals
- Vehicles
- Multi-year programs
- Capital campaigns

2007 Support to California Communities Report (PDF)*
California - How to Apply
Frequently Asked Questions

* You need Adobe® Reader® to read PDF files. Download Adobe Reader for free.

EXHIBIT 3

FORM G-37 **MSRB**

Name of dealer: _____

Report period: _____

I. CONTRIBUTIONS made to issuer officials (list by state)

State	Complete name, title (including any city/county/state or other political subdivision) of issuer official	Contributions by each contributor category (*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each contribution, list contribution amount and contributor category (For example, $500 contribution by non-MFP executive officer) If any contribution is the subject of an automatic exemption pursuant to Rule G-37(j), list amount of contribution and date of such automatic exemption.

II. PAYMENTS made to political parties of states or political subdivisions (list by state)

State	Complete name (including any city/county/state or other political subdivision) of political party	Payments by each contributor category (*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each payment, list payment amount and contributor category (For example, $500 payment by non-MFP executive officer)

III. CONTRIBUTIONS made to bond ballot campaigns (list by state)

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued	Contributions by each contributor category (*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers). For each contribution, list contribution amount and contributor category (For example, $500 contribution by non-MFP executive officer)

IV. [III.] ISSUERS with which dealer has engaged in municipal securities business (list by state)

State	Complete name of issuer and city/county	Type of municipal securities business (negotiated underwriting, agency offering, financial advisor, or remarketing agent)

Signature: _____ Date: _____
(must be officer of dealer)

Name: _____

Address: _____

_____

Phone: _____

Submit two completed forms quarterly by due date (specified by the MSRB) to:

Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314