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VIA FAX: 703-797-6700

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

Re: MSRB Notice 2010-30: Request for Comment on Dealer-Affiliated PACs Under G-37

Dear Ms. Carey:

The ABA Securities Association (ABASA)[1] appreciates the opportunity to submit this letter in response to the request by the Municipal Securities Rulemaking Board (MSRB) for comments on MSRB Notice 2010-30 (August 25, 2010), wherein the MSRB seeks comment on whether to require dealers to disclose the names of their affiliated political action committees (PACs) to the MSRB, even if the PACs are not controlled by a dealer or municipal finance professional (MFP).

In 2009, the MSRB sought comment on whether dealer affiliated PAC contributions should be subject to the mandatory disclosure requirements of Rule G-37.[2] After reviewing the commentary in response to this idea, the MSRB determined instead to seek comment on whether to require dealers to disclose the names of affiliated PACs. This alternative proposal is presumably made in an effort to address the jurisdictional, constitutional and practical concerns raised by commentators. However, the current proposal raises many of the same concerns as it would: increase dealers' reporting and compliance burdens; create a false impression of dealer control of the affiliated PAC; be contrary to the best practice of implementing informational barriers between broker-dealers and affiliated PACs; and improperly extend the MSRB's jurisdictional reach.

Rule G-37 Must Remain Sensitive to MSRB's Jurisdictional Limitations

"Rule G-37 was adopted to ensure that the high standards and integrity of the municipal securities industry are maintained by severing the connection between contributions by dealers and MFPs and the awarding of municipal securities business."[3] ABASA believes that the rule has had its intended effect in altering the political contribution practices of municipal securities dealers and opening a dialogue about the political contribution practices of the entire municipal securities industry. This reform has come with significant costs, including restrictions of MFPs' abilities to contribute to political campaigns, difficult compliance and disclosure burdens, and potentially draconian penalties, even for inadvertent rule violations.

[1] ABASA is a separately chartered trade association representing those holding company members of the American Bankers Association (ABA) actively engaged in capital markets, investment banking, and broker-dealer activities.
[2] MSRB Notice 2009-51 (September 16, 2009).
[3] MSRB Notice 2009-51 (September 16, 2009).

ABASA believes that the MSRB's current proposal ignores the MSRB's jurisdictional limitations by requiring disclosure about entities over which it does not have jurisdiction to regulate. From a policy perspective, the MSRB has not demonstrated that its concerns are real, not merely conjectural, and has failed to recognize that there is already ample disclosure of dealer-affiliated bank and bank holding company PAC contributions. While disclosure directly to the MSRB would significantly increase dealers' compliance burdens and could subject them to arbitrary rule violation allegations, it would not serve to alleviate perceived harms in a direct and material way.

1. The MSRB has no jurisdiction over banks and bank holding companies.

The regulation of the municipal securities market was established in 1975 in Section 15B of the Securities Exchange Act of 1934.[4] Section 15B required the Securities and Exchange Commission (SEC) to establish the MSRB to "propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers [provisions related to municipal advisors deleted]."[5]

The statute further defines the term "municipal securities dealer" as—

> any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include . . . a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; Provided, however, That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78o-4(b)(2)(H) of this title, the department or division and ***not the bank itself*** shall be deemed to be the municipal securities dealer.[6] [Emphasis added.]

The statute not only does not include the dealer's parent holding company or affiliates within the MSRB's jurisdiction, but also explicitly excludes banks that do not engage in municipal securities activities. Accordingly, the MSRB lacks jurisdiction over banks and bank holding companies and thus should not attempt to apply any of Rule G-37's disclosure obligations to entities outside of its jurisdiction.

2. Absent the jurisdictional issue, there would remain valid reasons for excluding disclosure of affiliated PACs from Rule G-37.

Assuming *arguendo* that the MSRB has jurisdiction to require regulated broker-dealers to disclose the names of all affiliated PACs to the MSRB, there would nonetheless be valid and sufficient reasons that affiliated PACs should not be disclosed pursuant to Rule G-37.

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[4] 15 U.S.C. § 78a *et seq.*

[5] 15 U.S.C. § 78o-4(b)(2).

[6] 15 U.S.C. § 78.3(a)(3). The MSRB has defined "separately identifiable department of a bank as "that unit of the bank which conducts all of the activities of the bank relating to the conduct of business as a municipal securities dealer" so long as such activities are directly supervised by a responsible officer and records are maintained such that they are separately available for examination. MSRB Rule G-1.

a. Banks and bank holding companies participate in the political process for reasons wholly unrelated to the municipal securities activities of their affiliated dealers.

While their presence in the capital markets has increased in recent years, the vast majority of their products and services remain wholly unrelated to their affiliated dealer's municipal securities dealer activities. Most of the services provided by banks and bank holding companies have no connection to the issuance of municipal bonds. (In fact, in most cases municipal bond activities comprise a relatively insignificant portion of a bank or bank holding company's overall business.)

Some of the most common examples of such services include:

- Deposit accounts;
- Loans;
- Cash management;
- Payroll operations;
- Credit card services;
- Property insurance activities;
- Risk management advice;
- Deferred compensation programs;
- Asset management; and
- Operating electronic benefit payment services.

In offering these products, banks and bank holding companies also must comply with state and local laws and regulations. The quality and wisdom of candidates for state and local offices whose expertise or lack thereof can directly impact the state and local laws and regulations applicable to banks is of serious interest to them.

Helping the best-qualified candidate assume office is the purpose of the contributions by bank and bank holding company PACs and the contributions would have been made regardless of whether the governmental body ever issued municipal securities. Requiring the disclosure of the names of affiliated PACs to the MSRB presumes or implies a nexus between these PACs and the municipal securities activities of the associated dealer where none exists. Moreover, if there were such a nexus, these PACs and their contributions already would trigger Rule G-37's reporting obligations.[7]

b. The MSRB has not identified specific problematic dealer practices that this rule change will address.

As justification for its rule expansion, the MSRB simply states that "[t]his would allow public scrutiny of the relationships between dealers and their affiliated PACs while recognizing that in many cases dealers may not control the activities of such affiliated PACs."[8] While the MSRB asserts

[7] In a 2003 MSRB Notice the MSRB stated that, "[w]hile Rule G-37 was adopted to deal specifically with contributions made to officials of issuers by dealers and MFPs, and PACS controlled by dealers or MFPs, the rule also prohibits MFPs and dealers from using conduits—be they parties, PACS, consultants, lawyers, spouses or affiliates—to contribute indirectly to an issuer official if such MFP or dealer can not give directly to the issuer without triggering the ban on business." *See* MSRB Notice Concerning Indirect Rule Violations: Rules G-37 and G-38 (August 6, 2003). The SEC also has just approved additional guidance from the MSRB designed to further police indirect violations of Rule G-37. See http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-45.aspx?n=1.

[8] MSRB Notice 2010-30 (August 25, 2010).

that its proposal may increase public scrutiny,[9] it does not adequately address whether what is being scrutinized is relevant to the MSRB's statutory mission. While municipal securities underwriters' campaign contributions may "self-evidently create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit[s] to their campaign chests rather than to the governmental entity,"[10] there is no self-evident connection with contributions by bank and bank holding company PACs.[11]

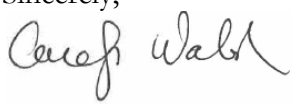
Moreover, as noted above, Rule G-37 already covers indirect as well as direct contributions to issuer officials. Our members are very cognizant of prior MSRB guidance, and so to avoid even the appearance of conduct prohibited by Rule G-37, banking organizations have scrupulously excluded officers and employees of registered broker-dealers that engage in municipal securities activities from managing or directing those PACs. If dealers are attempting to use affiliated bank or bank holding company PAC contributions as a *quid pro quo* for the awarding of municipal securities business, then the agencies that enforce the MSRB's rules already have the ability to prosecute such conduct as a violation of Rule G-37. Requiring dealers to disclose identities of affiliated PACs to the MSRB will unfairly taint such PACs and their contributions as related to the dealers' municipal securities business. More importantly, such disclosure also will break down information barriers that affiliated dealers have established to ensure that affiliated bank and bank holding company PAC contributions are **not** used to influence the awarding of municipal securities business. Surely, this is a result that the MSRB does not intend.[12]

Conclusion

In conclusion, the MSRB should not require broker-dealers to disclose the names of affiliated PACs because such disclosure would create a false impression of a nexus between the broker-dealer and the PACs; would undermine the informational barriers that have been set-up between the broker-dealer and affiliated PACs; and is not within the MSRB's jurisdiction.

If you have any questions, please do not hesitate to contact the undersigned**.**

Sincerely,



Carolyn Walsh
Deputy General Counsel
ABA Securities Association

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[9] Notably, the MSRB makes this assertion absent a showing that the public uses its website to identify political contributions, even those made by its regulated entities. As we noted in our comment letter in response to the September 2009 proposal, market transparency with regard to bank and bank holding company PAC contributions already has been achieved through state-sponsored reporting rules and systems. See http://www.aba.com/aba/documents/abasa/103009abasacommentletterruleg37.pdf.

[10] Blount v. SEC, 61 F.3d 938, 945 (D.C. Cir 1995)

[11] Significantly, contributions by bank holding companies were not covered by the rule when it was originally promulgated because the risk of corruption via dealer-affiliated bank and bank holding company PAC contributions was adjudged too remote to warrant restraint. Id. at 946-47.

[12] It also should be noted that the MSRB's proposed changes are inconsistent with advice provided by the MSRB to the industry in 2005 wherein the MSRB stated that, "to ensure compliance with Rule G-37(d) in connection with contributions by dealers or MFPs to non-controlled (but affiliated) PACs, the dealer might adopt information barriers between any affiliated PACs and the dealer or its MFPs." MSRB Q & A III.7 (September 22, 2005).