



Securities Industry Association

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April 5, 2005

Carolyn Walsh, Esq.
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Comments to Rule G-37 Interpretations

Dear Ms. Walsh:

The Securities Industry Association (“SIA”) ¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (“MSRB's”) proposed Questions and Answers (“Q&As”) regarding the application of Rule G-37 to contributions to political party committees and PACs. MSRB Notice 2005-11 (February 15, 2005). According to this Notice, the Q&As establish new due diligence standards to ensure that broker-dealers do not indirectly contribute to officials of issuers by giving to political party committees or PACs.

The SIA supports the purpose of Rule G-37 to prohibit any form of pay-to-play in the municipal securities industry whether it be direct or indirect contributions to issuer officials. Nevertheless, the proposed due diligence standards are so vague that they are impossible to apply. Thus, we request that they be clarified, as described below.

1 The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated \$227.5 billion in domestic revenue and \$305 billion in global revenues. (More information about SIA is available at: www.sia.com.)

1. The Q&As Are Vague

The Q&As do not provide clear, or even reasonably clear, guidance upon which broker-dealers may base their day-to-day activity. For example, the Q&As state that a broker-dealer should identify and keep records of the reasons as to why a particular contribution to a party committee or PAC was made, but do not give any guidance as to which specific reasons are permissible and which are not. Obviously, making a contribution for the purpose of influencing an issuer's selection of an underwriter would be impermissible. However, the overwhelming majority of cases do not involve such clear or problematic reasons. Indeed, a broker-dealer may be making a contribution in the form of an ongoing annual dues payment to a party committee or to support legislative candidates who are supportive of certain legislation. Moreover, an individual MFP may want to support a party committee because of his or her party affiliation or the wide variety of social issues supported by that party. The proposed Q&As do not provide any guidance for cases involving these and other benign reasons.

The Q&As also state that the party committee or PAC in question should not "raise money to support one or a limited number of issuer officials." Although the meaning of this language is unclear, it appears to require a broker-dealer to look at what portion of a party committee's or PAC's total expenditures is spent on issuer officials. However, there is no guidance as to what percentage would trigger an indirect ban under Rule G-37.

2. The Q&As Should Be Clarified

For the proposed standards to be workable, the above vagueness must be clarified with bright-line guidance with respect to any party committee or PAC (federal, state or local). Indeed, such clear guidance is mandated by the First Amendment of the Constitution, which prohibits the regulation of any form of protected free speech (including political contributions) in a vague or overbroad manner.

However, providing clarification and certainty is particularly important when it comes to national party committees and federal leadership PACs. Specifically, regardless of how one were to read the proposed due diligence standards, they appear to permit contributions to national party committees and federal leadership PACs. National party committees raise hundreds of millions of dollars primarily to support federal candidates. Thus, the portion of their total expenditures that may go to issuer officials is very insignificant. As for federal

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leadership PACs, they are controlled by incumbent U.S. Senators or Representatives to contribute to their colleagues in Congress or to other federal candidates.

Moreover, although broker-dealers have many legitimate reasons for giving to state and local party committees, as described above, this is even more the case when it comes to national party committees and federal leadership PACs. Indeed, broker-dealers have an interest in supporting national party committees and federal leadership PACs to help elect Congressmen and a President whose positions are good for the industry and the economy.² This is just as important as directly supporting non-issuer official federal candidates, which is permitted under Rule G-37. Being politically active at the federal level is essential to broker-dealers given that they are one of the most highly regulated industries, and are subject to a wide variety of legislation ranging from taxes to banking regulation.

Despite the legitimacy and apparent permissibility of these federal contributions, the vagueness of the Q&As cast an undue cloud over contributions to any party committee or PAC, no matter how benign. Thus, to avoid any uncertainty, the MSRB should create a safe-harbor from the two-year ban for contributions made to a national party committee or federal leadership PAC. To avoid even the appearance of an indirect violation, the MSRB could, if it wishes, limit this safe-harbor to situations where the contribution was not solicited by an issuer official and where the party committee or leadership PAC is not controlled by an issuer official.

We look forward to working with the MSRB staff regarding these issues. Please call us with any questions.

Sincerely,

Marc E. Lackritz
President

² Please note that the Federal Election Campaign Act of 1971, as amended, prohibits corporate contributions at the federal level. Thus, broker-dealers may only contribute to national party committees and federal leadership PACs by using its federal PAC, which is funded solely by employee contributions.

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cc: **Securities and Exchange Commission**

The Honorable William H. Donaldson, Chairman
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
Giovanni P. Prezioso, General Counsel, Office of the General Counsel
Annette L. Nazareth, Director, Division of Market Regulation
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