MSRB
Municipal Securities
Rulemaking Board

MSRB NOTICE 2012-43 (AUGUST 15, 2012)

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

INTRODUCTION

The Municipal Securities Rulemaking Board ("MSRB") is requesting comment on draft amendments to MSRB Rule G-37 (on political contributions and prohibitions on municipal securities business) and MSRB Rule G-8 (on books and records to be made by dealers). The draft amendments would require public disclosures of additional information related to broker, dealer and municipal securities dealer ("dealers") contributions to bond ballot campaigns.

Comments should be submitted no later than September 17, 2012, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Leslie Carey, Associate General Counsel, at 703-797-6600.

BACKGROUND

Rule G-37 requires dealers to disclose on Form G-37 certain contributions to issuer officials, contributions to bond ballot campaigns, and payments to political parties of states and political subdivisions made by dealers, municipal finance professionals ("MFPs"),[2] their political action committees ("PACs") and non-MFP executive officers.[3] The rule prohibits dealers from engaging in municipal securities business[4] with an issuer within two years after certain contributions to an official of such issuer are made by the dealer, any MFP associated with such dealer or any PAC controlled by the dealer or any MFP. The rule's prohibition on engaging in municipal securities business is not triggered by contributions that are made to bond ballot campaigns or payments made to political parties of states and political subdivisions by dealers, MFPs or their PACs. In addition, certain *de minimis* contributions and payments made by MFPs and non-MFP executive officers are not subject to the rule's disclosure requirements,[5] and certain *de minimis* contributions by MFPs to issuer officials also do not trigger a ban on municipal securities business.[6]

The MSRB believes Rule G-37 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, thereby effectively eliminating pay-to-play practices in the new issue municipal securities market.[7]

BOND BALLOT CAMPAIGNS AND INDUSTRY CONCERNS

Bond ballot measure campaigns typically occur as a result of a state or local government placing a ballot measure before voters to approve a 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 financing for school districts, transportation and other municipal projects.

Since February 1, 2010, the MSRB has required public disclosure under Rule G-37 of non-*de minimis* contributions to bond ballot campaigns made by dealers, MFPs, their PACs, and non-MFP executive officers. Rule G-37 also requires dealers to create and maintain records of such reportable contributions to bond ballot campaigns. The requirement to provide public disclosure of non-*de minimis* contributions to bond ballot campaigns made by dealers and dealer personnel resulted, in part, from industry concerns that contributions to bond ballot campaigns could assist dealers with obtaining municipal securities business, thereby raising the perception of pay-to-play practices, and the MSRB's concern about the

lack of effective transparency regarding information on bond ballot campaign contributions that was available to the public.[8] The availability of public disclosures by dealers about their contributions to bond ballot campaigns in a centralized format on the MSRB's website through Form G-37 has substantially increased the amount of information available to market participants, thereby increasing market transparency and strengthening market integrity.

Some industry participants and market observers continue to express concerns regarding the potential adverse effect on the integrity of the municipal securities market arising from dealer and dealer personnel contributions to, and other activities relating to, bond ballot campaigns. For example, the MSRB has been informed of certain practices involving possible informal understandings among election advisors,[9] underwriters, municipal advisors, and/or issuers in which financial support of bond ballot campaigns may be linked to the retention of such parties by the issuer if the associated bond ballot measure is approved. It has also been alleged to the MSRB that certain underwriters and municipal advisors may make contributions to bond ballot campaigns, either in cash or in kind, with the expectation that they will be reimbursed for such contributions by the issuer of the municipal securities that are the subject of the campaign in the form of additional compensation, above what they might otherwise normally receive, for their work on the resulting municipal securities transaction. Further, the MSRB has been informed that some underwriters and municipal advisors may make expenditures, either in cash or in kind, for the costs of initiating or conducting bond ballot campaigns (*e.g.*, polling), with the expectation of being reimbursed by the issuer by being selected to work on the resulting municipal securities transaction. In some of these cases, such contributions or other costs for which direct or indirect reimbursement is alleged to be sought from the issuer, by an underwriter or a municipal advisor, may occur under circumstances where the issuer or its personnel may be prohibited by state or local laws or regulations from directly making such expenditures. Accordingly, such contributions and expenditures by certain dealers and municipal advisors may assist an issuer in avoiding state law restrictions and, depending on the totality of the facts and circumstances, could independently violate Rule G-17 even if not precluded by Rule G-37.[10]

The practices described above raise the perception of pay-to-play, or the existence of similar types of potential conflicts of interest, related to bond ballot committee contributions and related bond ballot campaign activities by dealers and dealer personnel and the awarding of municipal securities business, which may be in contravention of the intent of Rule G-37 and with the general principles of fair practice embodied in MSRB rules.[11]

REQUEST FOR COMMENT

As a next step in its continual review of Rule G-37 and potential conflicts of interest or other practices that may present challenges to the integrity of the municipal securities market, the MSRB is considering the following revisions to Rule G-37 and Rule G-8 that would require additional public disclosure of certain information related to contributions made by dealers, MFPs, their PACs and non-MFP executive officers to bond ballot campaigns, and the municipal securities business engaged in by dealers in connection with new issues authorized pursuant to such campaigns, on revised MSRB Form G-37:

- Require a dealer to provide the complete name of the entity that will issue the bonds that were authorized by the bond ballot campaign to which a contribution was made by the dealer, its MFP or non-MFP executive officer (other than a *de minimis* contribution), or applicable PAC, to be included in the quarterly report covering the contribution;
- Require a dealer to disclose the complete name of the primary offering (*e.g.*, full issuer name and full issue description in a manner consistent with the submission requirements in connection with primary offerings under MSRB Rule G-32) resulting from the bond ballot campaign for which such dealer engages in municipal securities business and to which a contribution was made by the dealer, its MFP or non-MFP executive officer (other than a *de minimis* contribution), or applicable PAC, and to also disclose the specific date (*i.e.*, month, day and year) on which the dealer was selected to engage in such municipal securities business, to be included in the quarterly report covering the closing date of the offering that was authorized by the bond ballot campaign;
- In connection with the existing requirement to disclose contributions to bond ballot campaigns, also require a dealer to disclose the specific date (*i.e.*, month, day and year) on which a contribution was given by the dealer, its MFP or non-MFP executive officer (other than a *de minimis* contribution), or applicable PAC to the bond ballot campaign;
- Require a dealer to disclose whether the dealer or any of its MFPs or non-MFP executive officers received payments or reimbursements (*e.g.*, fees and/or expenses charged) related to any bond issuance resulting from a bond ballot campaign to which the dealer, its MFP or non-MFP executive officer (other than a *de minimis* contribution), or applicable PAC contributed from any third party (including, but not limited to, an issuer, election advisor, or financial advisor), to be included in the quarterly report covering the payments or reimbursements; and

- Revise the term “contribution” to more clearly cover the full range of cash and in-kind contributions that might be given in the context of a bond ballot campaign and, with regard to in-kind contributions, require dealers to disclose both the value and nature of the services being provided by the dealer or its personnel, including election services or other collateral work provided on behalf of the issuer or bond ballot campaign.

The above described draft revisions would assist the MSRB as it continues to assess whether further action regarding dealer and dealer personnel contributions to bond ballot campaigns, up to and including a corresponding ban on business as a result of certain contributions, would be warranted in the future. The MSRB is soliciting comments from the industry and other interested parties on all aspects of the draft amendments and the range of practices described in this notice undertaken by dealers, municipal advisors and other market participants in connection with contributions to bond ballot campaigns and related activities that can give rise to concerns regarding the integrity of the municipal securities market.

In addition, the MSRB seeks comments on the following specific matters:

- Would the draft amendments help to protect the integrity of the municipal securities market, and are there specific benefits that issuers, investors and the public (including taxpayers) would realize from adopting the draft amendments?
- Would the draft amendments have any negative effects on issuers, investors and the public, or on the fairness, efficiency or overall integrity of the municipal securities market? If so, please describe in detail.
- Dealers are already required to collect, report and retain records of certain information in connection with bond ballot campaigns under the current provisions of Rules G-37 and G-8. What would be the incremental additional burden, if any, to dealers to collect, report and retain records of the additional items of information that would be required under the draft amendments?[12]
- Are there alternative methods to providing the protections sought under the draft amendments that the MSRB should consider and that would be more effective and/or less burdensome?
- Although municipal advisors that are not dealers are not subject to Rule G-37, would it be appropriate to include the provisions of the draft amendments in any future pay-to-play rule adopted by the MSRB applicable to such non-dealer municipal advisors?

August 15, 2012

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TEXT OF DRAFT AMENDMENTS[13]

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) No change.

(1) No change.

(2) the contribution amount made **(which, in the case of in-kind contributions, must include both the value and the nature of the services being provided, including any ancillary services provided on behalf of the issuer or the bond ballot campaign), the specific date on which the contribution was made,** and the contributor category of each of the following persons and entities making such contributions during such calendar quarter:

(a) - (d) No change.

(3) the full issuer name and full issue description of any primary offerings resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to this clause (B) has been made and the specific date on which the broker, dealer or municipal securities dealer was selected to engage in such municipal securities business, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) the payments or reimbursements received by each broker, dealer or municipal securities dealer or any of its MFPs from any third party related to any bond ballot contribution required to be disclosed pursuant to this clause (B), including the amount paid and the name of the third party making such payment.

(C) - (F) No change.

(f) No change.

(g) Definitions.

(i) The term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) **in connection with a contribution to an official of an issuer:**

(1) ~~(A)~~ for the purpose of influencing any election for federal, state or local office;

(2) ~~(B)~~ for payment of debt incurred in connection with any such election; or

(3) ~~(C)~~ for transition or inaugural expenses incurred by the successful candidate for state or local office**; or**

(B) in connection with a contribution to a bond ballot campaign:

(1) for the purpose of influencing (whether in support of or opposition to) any ballot initiative seeking authorization for the issuance of municipal securities through public approval obtained by popular vote;

(2) for payment of debt incurred in connection with any such ballot initiative; or

(3) for payment of the costs of conducting any such ballot initiative .

(ii) - (x) No change.

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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) for which municipal securities, if approved, would be issued, ~~and~~ (iii) the amounts **(which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided**

on behalf of the issuer or the bond ballot campaign) and **specific** dates of such contributions**, (iv) the full issuer name and full issue description of any primary offerings resulting from the bond ballot campaign to which the broker, dealer or municipal securities dealer or political action committee controlled by the broker, dealer or municipal securities dealer has made a contribution and the specific date on which the broker, dealer or municipal securities dealer was selected to engage in such municipal securities business, and (v) the payments or reimbursements received by the broker, dealer or municipal securities dealer from any third party related to any bond ballot contribution required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment.**

(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 (**which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided on behalf of the issuer or the bond ballot campaign)** and **specific** dates of such contributions**, (iv) the full issuer name and full issue description of any primary offerings resulting from the bond ballot campaign to which the municipal finance professional, political action committee controlled by the municipal finance professional or non-MFP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B) and the specific date on which the broker, dealer or municipal securities dealer was selected to engage in such municipal securities business, and (v) the payments or reimbursements received by the municipal finance professional or non-MFP executive officer from any third party related to any bond ballot contribution required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment**; 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) - (K) No change.

(xvii) - (xxiii) No change.

(b) - (g) No change.

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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)

A. Contributions

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued and the name of the entity issuing the municipal securities	Contributions, including the **specific date** the contributions were made, 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)

B. Reimbursement for Contributions

List below any payments or reimbursements received by each broker, dealer or municipal securities dealer, municipal finance professional or non-MFP executive officer from any third party related to any disclosed bond ballot contribution, including the amount paid and the name of the third party making such payment.

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

A. Municipal Securities Business

State

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

B. Ballot-Approved Offerings

Full issuer name and full issue description of any primary offerings resulting from the bond ballot campaign to which each contributor category (i.e., dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and non-MFP executive officers) has made a contribution and the specific date on which the broker, dealer or municipal securities dealer was selected to engage in such municipal securities business.

Full Issuer Name	Full Issue Description	Date of Engagement

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

Name:_____

Address:_____

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

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

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[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[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 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] 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 engaging in municipal securities business.

[4] 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.

[5] Dealers are not required to disclose (a) contributions made by MFPs and non-MFP executive officers to issuer officials for whom such person is entitled to vote if such contributions, in total, do not exceed $250 per election, (b) contributions made by MFPs and non-MFP executive officers to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if such contributions, in total, do not exceed $250 ballot initiative, and (c) payments made by MFPs and non-MFP executive officers to political parties of states and political subdivisions in which such person is entitled to vote if such payments, in total, do not exceed $250 per year.

[6] 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.

[7] The MSRB previously proposed a new rule that would apply similar pay-to-play restrictions to municipal advisors but withdrew such proposal pending final rulemaking by the Securities and Exchange Commission (the "SEC") on a permanent municipal advisor registration rule and related definitional matters. *See* MSRB Notice 2011-46 (August 19, 2011); MSRB Notice 2011-51 (September 12, 2011). The MSRB would expect to include the same types of disclosures described in this notice in any such rule it may propose in the future with regard to municipal advisors upon completion of such SEC rulemaking. The MSRB will seek additional comments, beyond those it has already received in connection with its earlier withdrawn proposal, on any municipal advisor pay-to-play rulemaking proposals at such time.

[8] The MSRB noted that the lack of effective transparency results from 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. *See* MSRB Notice 2009-35 (June 22, 2009).

[9] The MSRB expresses no opinion as to whether the activities engaged in by such election advisors would result in their being viewed as municipal advisors within the meaning of Section 15B(e)(4) of the Securities Exchange Act of 1934, pending final rulemaking by the SEC on the definition of municipal advisor.

[10] Although municipal advisors that are not dealers are not subject to the provisions of Rule G-37, they are subject to the provisions of Rule G-17.

[11] MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each dealer and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. These principles of fair practice have previously been viewed as applicable in the context of the MSRB's efforts to eliminate pay-to-play activities in the municipal securities market. *See, e.g.,* MSRB Notice 2003-32 (August 6, 2003); *In the Matter of Pryor, McClendon, Counts & Co. et al., Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order* (February 6, 2002) (broker-dealer violated Rule G-17 by concealing certain political contributions that would have triggered a ban on business under Rule G-37). *See also* MSRB Reports, Draft Rule G-37, Concerning Political Contributions in the Municipal Securities Market, Volume 13, Number 4 (August, 1993); Testimony of Charles W. Fish, Chairman, Municipal Securities Rulemaking Board before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives (September 7, 1993) at 59, n.86.

[12] Similarly, many of the disclosures required under current Rule G-37 may also become required disclosures by municipal advisors to municipal entities under another MSRB proposal. *See* MSRB Notice 2011-46 (August 19, 2011); *but see* MSRB Notice 2011-51 (September 12, 2011). What would be the incremental additional burden to municipal advisors to collect, report and retain records of the additional items of information that would be required under the draft amendments?

[13] Underlining indicates new language; strikethrough denotes deletions.

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