EXHIBIT 2

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?

* * * * *

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.

* * * * *

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.

* * * * *

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.

Alphabetical List of Comment Letters on MSRB Notice 2012-43 (August 15, 2012)

1. Barclays: Letter from Robert Taylor, Managing Director, Head of Municipal Finance, dated September 17, 2012

2. California Association of County Treasurers and Tax Collectors: Letter from Wayne Hammar, President, dated September 13, 2012

3. Center for Competitive Politics: Letter from Allen Dickerson, Legal Director, dated September 17, 2012

4. Government Financial Strategies Inc.: Letter from Robert W. Doty, General Counsel, dated September 17, 2012

5. Magis Advisors: Letter from Timothy J. Schaefer, President/Principal Owner, dated September 14, 2012

6. Morgan Stanley: Letter from Stratford Shields, Managing Director, dated September 17, 2012

7. National Association of Independent Public Finance Advisors: Letter from Colette J. Irwin-Knott, President, dated September 17, 2012

8. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 17, 2012

Fixed Income,
Currencies &
Commodities

745 Seventh Avenue
New York, New York 10019
Tel (212) 526-7000

barclays.com

September 17, 2012

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: 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

Dear Mr. Smith,

I appreciate the opportunity to comment on MSRB Notice 2012-43 (the "Notice") proposing amendments to MSRB Rule G-37 and Rule G-8 requiring disclosure of additional information related to broker, dealer and municipal dealer ("dealers") contributions to bond ballot campaigns.

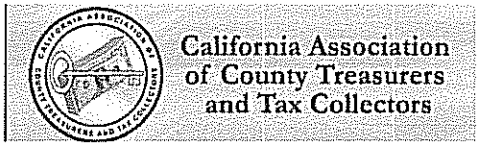
While I support the Board's efforts to address conflicts of interest, actual and apparent, raised by cash and in-kind contributions of dealers and their municipal finance personnel ("MFPs") to bond ballot campaigns, I would respectfully suggest that the Board consider seeking a more direct means to address these issues. Specifically, I encourage the Board to consider measures that would prohibit dealers from engaging in municipal securities business authorized by a bond ballot election for a clearly defined period of time after the dealer or any of its MFPs have made non-*de minimis* cash or in-kind contributions to support the bond ballot campaign authorizing such municipal securities business. The terms of such a prohibition should not turn on whether a dealer expects to be, or is, reimbursed for such contributions, and should apply with respect to the kinds of support activities identified in the Notice (e.g., polling) whether or not local law would permit an issuer to engage in such activity.

The Board has clearly identified the legitimate concerns of industry participants and market observers regarding the adverse effect bond ballot activity by dealers and MFPs has on the integrity of the municipal securities market. Such concerns have a tendency to extend beyond issuances supported by bond ballot campaigns and reflect poorly on our industry as a whole. As noted above, I therefore would support the Board in any further efforts to prohibit the offending practices on an industry-wide basis.

Thank you to the Board for the opportunity to comment on the Notice, and its continuing initiative to improve the image and integrity of our industry in this area.

Yours sincerely,

/s/ Robert Taylor
Managing Director
Head of Municipal Finance



CACTTC

September 13, 2012

Jennifer Galloway
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Dear Ms. Galloway,

Thank you for the opportunity to comment on this important proposed change to MSRB Rule G-37 to disclose certain contributions to municipal bond ballot campaigns. The California Association of County Treasurers and Tax Collectors (CACTTC) is in full support of including disclosure requirements for bond ballot campaigns and believes that an amendment to Rule G-37 is necessary to reduce the perception of pay-to-play and to help ensure that underwriters and other municipal financial professionals are not awarded bond transactions because they have contributed to related bond ballot measures.

In fact, CACTTC believes that the MSRB should go one step further and consider an amendment to Rule G-37 that includes an outright ban on brokers, dealers, or any other municipal finance professionals from contributing to bond ballot measures and/or their related committees. This proposed ban would simply expand the existing ban on political contributions to public officials involved in approving related bond transactions.

CACTTC is in a unique position to see the impacts of pay-to-play activities throughout all 58 counties within the State of California. The bond ballot contribution problem is most prevalent for school district financings in California due to proposition 39, enacted in 2000, which lowered to 55%, from 66%, the amount of voter approval needed to approve a bond ballot measure. A recent review by The Bond Buyer publication found "a nearly perfect correlation between broker-dealer contributions to California school bond efforts in 2010 and their underwriting subsequent bond sales". CACTTC believes that similar correlations exist for related municipal financial professionals as well.

Pay-to-play activities in municipal bond elections and transactions undermine the competitive process that ensures that taxpayer money is spent in the most efficient and effective manner, and CACTTC strongly urges the MSRB to make amendments to Rule G-37 that will either shed light on or eliminate pay-to-play activities.

Sincerely,

Wayne Hammar
CACTTC President

CENTER *for* COMPETITIVE POLITICS
Congress shall make no law...

September 17, 2012

Via Electronic Submission

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

RE: Potential Revisions to Rule G-37

Dear Sir or Madam:

I represent the Center for Competitive Politics ("CCP"), an organization dedicated to preserving our First Amendment political rights to speech, association, and petition. I am writing to comment on the proposed changes to Rule G-37, as well as the potential direction of future revisions.

Given the Board's positive outlook on how G-37 has performed as a hedge against pay-to-play corruption, CCP was not surprised to see this proposal extending certain elements of the current rules to apply to bond ballot measure campaigns. But the Board has overlooked the long-standing constitutional distinction between contributions to candidates and those given to support or oppose ballot initiatives. Simply put, ballot measure committees receive stronger constitutional protection against government regulation than do candidates.

As a result, CCP is concerned about the proposed redefinition of "contribution" in Section g(i) of the Rule. We are especially concerned that the Board may "take 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."[1]

Since blessing the modern machinery of the campaign finance regime in *Buckley v. Valeo* in 1976, the Supreme Court has based most of its acceptance of regulations on candidate committees and political action committees (PACs) on the threat of *quid pro quo* corruption, or the appearance of such corruption

But "[t[he risk of corruption perceived in cases involving candidates...simply is not present in a popular vote on a public issue."[2] For example, even though the Court has permitted limits on the amount that individuals may contribute to a candidate, it has declared unconstitutional any limits on the amount of money that may be contributed to a ballot measure.[3]

[1] *See* MSRB Rule 37-G, Sec. b(i); proposed MSRB Sec. g(i); MSRB Notice 2012-43 (August 15, 2012).
[2] *Bellotti v. First Nat'l Bank of Boston*, 435 U.S. 765, 790 (1978).
[3] *Buckley v. Valeo*, 424 U.S. 1, 30 (1976); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981).

This makes sense: who is potentially corrupted by contributions to a ballot measure committee? The electorate directly votes on such measures, and the voters themselves cannot be "bought" by the advertising or campaign of those promoting a ballot measure.

Indeed, a critical part of the D.C. Circuit's analysis upholding G-37 from a constitutional challenge in 1995 rested on the fact that the Rule "constrain[ed] relations only between two potential parties to a *quid pro quo*: the underwriters and their municipal finance employees on the one hand, and officials who might influence the award of negotiated municipal bond underwriting contracts on the other.[4] The Court specifically took note that "as the Commission interprets the rule, municipal finance professions 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, giving speeches, soliciting votes, writing books or appearing at fundraising events."[5] Had the regulation been otherwise it is possible that the Court would not have found G-37 to be "closely drawn and thus avoid[ing] unnecessary abridgement of First Amendment rights."[6]

In the MSRB's Request for Comment, the agency claims they are worried about "certain practices involving possible informal understandings among election advisors, 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" and that underwriters and municipal advisors may make contributions or expenditures with the expectation of being reimbursed by the issuer after a bond measure wins.[7]

But this concern has nothing to do with the creation of a *quid pro quo* arrangement between the bond ballot measure *committee* and the contributors. The ballot measure committee is, under the law, an entirely separate entity from the issuer. There is no identity of interests between the person supported for election and the person making hiring and issuing decisions, as is the case in the candidate context and as the D.C. Circuit required in *Blount.*

The Board's announcement and analysis make no mention of this crucial distinction.

While the present revisions would impose only record-keeping burdens, those requirements would do little to advance the MSRB's anticorruption mission. In particular, the recordkeeping requirements for in kind contributions do little to prevent corruption, but would chill a kind of political participation – volunteer work – that is central to individuals' engagement with their communities. Similarly, by requiring recordkeeping of non *de minimis* contributions, and defining such contributions at the same rate as those for candidates, the proposed revisions conflate contributions to candidates with those to support or oppose ballot initiatives. For the reasons given above, this is improper.

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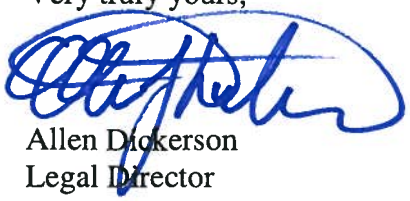
[4] *Blount v. SEC*, 61 F.3d 938, 947 (D.C. Cir. 1995).
[5] *Id.* at 948.
[6] *Id.* at 947 (internal quotation marks and citation omitted).
[7] MSRB Notice 2012-32 (August 15, 2012).

This error would be compounded by future attempts to, in effect, ban such contributions. We appreciate that the MSRB is seeking to prevent corruption between issuers on one hand and brokers, dealers and other municipal securities professionals on the other. There may well be other, constitutional, avenues to attack such a problem. But starkly limiting contributions to ballot measure committees—as opposed to candidate committees—is not one of them.

The law is clear. "Whatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committees *there is no significant state or public interest* in curtailing debate and discussion of a ballot measure."[8] This analysis also applies to creating regulatory burdens that may chill participation in such debates.

CCP respectfully requests that the Board reconsider its proposed re-definition of the word "contribution," the definition of *de minimis* as applied to ballot measure contributions, and the burden its recordkeeping requirements for in kind contributions may have on volunteer activity. CCP also generally requests that the Board, in its present and future discussions, take into consideration the fact that ballot issue, ballot measure, and independent expenditure committees are granted far more constitutional protection than are candidate committees.[9]

Very truly yours,



Allen Dickerson
Legal Director

[8] *Citizens Against Rent Control*, 454 U.S. at 299 (emphasis added).
[9] *See Bellotti v. First Nat'l Bank of Boston*, 435 U.S. 765 (1978); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 90 (1981); *Citizens United v. FEC*, 130 S.Ct. 876 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

Government Financial Strategies inc.

September 17, 2012

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2012-43 (Aug. 15, 2012), Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business—Bond Ballot Campaign Committee Contributions

Ladies and Gentlemen:

Thank you for this opportunity to comment on MSRB Notice 2012-43 (Aug. 15, 2012), Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business—Bond Ballot Campaign Committee Contributions ("Notice 2012-43").

By requesting comment on disclosures contemplated in Notice 2012-43, the Board is taking another important step in the right direction with reference to bond election contributions by dealers serving in underwriting capacities. We believe that further action will be warranted as the Board continues to examine this area, but the disclosures contemplated in Notice 2012-43 would be an important step nonetheless. Among other things, once the definition of the "municipal advisor" concept is finalized by the Securities and Exchange Commission, financial advisors and other municipal advisors can be brought within the scope of the regulation.

In California, where school bond elections have required only a 55% voter approval since 2000, there has been a large increase in the number of bond measures submitted to voters. Government Financial Strategies is concerned about the lack of transparency in how school bond campaigns are funded, frequently by interested parties and in significant amounts, and how this leads to corruption.

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Our President, Lori Raineri, has testified on the subject before the California Legislature. In doing so, Ms. Raineri made the following points—

- This common practice is an illegal use of public funds for campaigning

  In Opinions No. 7861 dated March 21, 2003, and No. 1008348 dated June 28, 2010, the California Legislative Counsel concluded that "it is our opinion that a school district or other local agency may not condition the award of an agreement to provide bond underwriting services on the underwriter also providing campaign services in support of that bond measure or another bond measure proposed by the school district or other local agency."

- It is important to prevent the corruption of a negotiation in which great sums of public funds are at stake

  The public official's ability to negotiate fees and costs is compromised because the party on the opposite side at the time of the negotiation was formerly the issuer's uncompensated, and often secret, advocate. There is a lingering obligation to reimburse the opposing party for this advocacy. When the negotiation is about bond pricing, a seemingly small differential (at the magnitude of basis points) can mean millions of dollars. Because public officials are very focused on the core mission of the public agency, they often perform little or no due diligence on bond costs, have little or no information about market pricing other than what the party with whom they are negotiating provides, and are motivated by the history of support for the campaign.

- It is important to eliminate an unfair and improper public purchasing practice of professional services

  Hiring of financial professionals is exempted from customary public bidding requirements, and public agencies may select professional service firms on the basis of qualifications. However, the selection often seems to utilize an unfair and improper purchasing criterion, namely the provision of campaign contributions and/or services. The opportunity to provide these services is not advertised or requested of all potential responders, because to do so brings us right back to the first and over-riding problem, the illegal use of public funds for campaign activities.

- It is important to reduce the conflict of interest on the part of professionals in the provision of advice

  Financial professionals who provide uncompensated bond campaign services have made a substantial investment, and have substantial interest in its passage but also in the issuance of bonds so they can be paid. These same financial professionals are typically also advising on the financing plans, including important assumptions regarding tax base growth and term of

> bonds, and providing statutorily required conclusions such as projected tax rates. This particular problem was illuminated with the cash out general obligation bond refundings, which the Attorney General concluded were in violation of the California Constitution.

These practices also are contrary to the Best Practice recommendation of the Government Finance Officers Association ("Selecting and Managing the Method of Sale of State and Local Government Bonds") that general obligation bonds in the "A" rated categories or higher (which are the vast majority of general obligations bonds) should be sold through competitive bids. One inefficient result of bond election contribution practices is that underwriters are selected by means of negotiated sales, and that higher interest rates than are necessary are negotiated with issuers and imposed upon taxpayers in order to sell the bonds.

Further, we are aware of situations in which financial advisors manage bond elections, and both recommend the engagement of other professionals such as bond counsel and underwriters and solicit campaign contributions from these professionals. The advisors then are paid for the management of the campaign from these contributions. Often, these contributions are substantial, in amounts that may range from $5,000 to $25,000 or $35,000 or more. The contributions may flow through election campaigns directly to the advisors on a noncontingent basis. Election campaigns in California are separate from the bond issuers (frequently school districts, but also cities and other local governments), but naturally have a high correlation with the bond issuers' leadership.

Government Financial Strategies has a policy of donating $500 to every tax and bond campaign of our client agencies, without regard to whether the firm has any related work. We don't object to vendors of public agencies providing donations for charitable or political efforts of the agencies, and certainly if this were prohibited by State or Federal law, we would cease immediately. Our concern is that, in the absence of holding financial advisors and bond underwriters to performance standards related to the appropriateness and efficiency of financing relative to taxpayer goals, the principal standard of performance often becomes the size of the campaign contributions. Further, if a financial advisor or underwriter is also serving as an election consultant/campaign manager, the financial advisor or underwriter may receive compensation through the campaign, the funding for which comes from other professionals recommended by the financial advisor or underwriter. That creates a conflict of interest for both the financial advisor with a duty to the bond issuer and for the underwriter with a duty to investors.

Financial advisors and other municipal advisors already are subject to the statutory fiduciary duty imposed in the Dodd-Frank Wall Street Reform and Consumer Protection Act (and commonly under state law). The advisors already are subject to the fair dealing requirements and antifraud prohibitions of the MSRB's Rule G-17. The municipal advisors' fiduciary duty requires that the advisors provide

advice to issuer decision-makers in the issuers' best interests. Practices that clearly corrupt the municipal advisor from its duty should not be allowed.

Surely, these practices present significant issues under both the financial advisors' statutory fiduciary duty and, for both underwriters making payments and advisors receiving them, Rule G-17. While the definition of "municipal advisor" may be uncertain at the margins as the market awaits final SEC action on the definition, there is little doubt that financial advisors advising issuers regarding the issuance of municipal bonds are, in fact, well within the definition and are subject to the fiduciary duty and Rule G-17.

There are variations in bond election contribution patterns. Other underwriters simply administer bond election campaigns themselves. In doing so, those firms provide both monetary and in-kind value. Those underwriters may advertise this function as a "service" provided to issuers. Yet, in California and other states the issuers cannot administer bond election campaign themselves. Still, in those facts and circumstances, the issuers invariably employ those underwriters to underwrite the bonds the voters approve. The practice has the appearance of those issuers doing indirectly through municipal finance professionals what the issuers cannot do directly.

For example, some underwriters charge, as underwriter compensation for selling general obligation bonds, compensation of 1.00%, 1.25% or even 1.50% of the bond sale proceeds received by the issuers. Meanwhile, Bond Buyer surveys have demonstrated repeatedly for many years that typical underwriter compensation in the municipal securities market is approximately only 0.60% or less for underwriting general obligation bonds. General obligation bonds sold at competitive bids would never entail such excessive underwriter compensation.

Given the foregoing considerations, we do not believe the disclosure requirements that are contemplated in Notice 2012-43 would impose undue burdens upon underwriters, nor do we believe that a future extension of those disclosure requirements to municipal advisors would do so. It would be quite helpful to place on the public record information regarding the specific issuers and bond issues implicated through the actions of municipal finance professionals. It also would be helpful to include reporting of in-kind contributions and the value of in-kind contributions, which are excluded from current reporting requirements. Certainly, Government Financial Strategies would not regard it to be onerous to report our contributions.

Unfortunately, reports on EMMA regarding underwriter contributions consist of quarterly reports. Quarterly reports are not necessarily provided in a timely manner for the benefit of the electorate. For example, contributions in October for elections in November will not be reported until after December. Moreover, EMMA's online campaign contribution report records are difficult to search in a systematic manner.

For example, EMMA's records cannot be searched at present by issuer names or titles of bond issues, which voters may wish to do.

Making matters even more difficult for voters, in California where these practices are prevalent, county election expenditure reports showing payments of contributed funds to advisors may not be released in some counties until after the elections. Counties also may make the reports available in different ways. It is virtually impossible to match election campaign expenditure reports by counties with campaign contribution reports to the Board. It is quite difficult to determine which municipal securities professional firms are making payments that flow through campaigns to which financial advisors or election advisors. For the average voter, who already has voted, such matching is far beyond reasonable capabilities.

So, a key missing ingredient in Notice 2012-43 is that the voters—the decision makers—are not given key information they need in order to make informed decisions. They make their authorizing decisions while entirely ignorant of who is paying for the election campaigns, how much those parties are contributing, how much those parties anticipate receiving in compensation when the bonds are issued, the contingent fee structures pursuant to which the professionals are to be paid, and the roles of those parties in preparation of tax rate statements and other information published by issuers in connection with the ballot measures.

When elections are held, the voters are the decision-makers at a policy level for the issuers. In a very real sense, at election time, the voters are the governing bodies of the issuers for the purpose of making decisions whether bonds and taxes should be approved and whether the issuers should be able to enter into contracts constituting and associated with the bond issues. Not even issuer boards of directors are able to alter the voters' decisions. Fairness under Rule G-17 demands that these key decision-makers—the voters—be fully informed of the identities and significant financial interests of municipal finance firms contributing in support of the ballot measures. After all, Rule G-17 demands that municipal finance professionals "shall deal fairly with all persons," and the voters are "persons."

Given the foregoing considerations, and without detracting from our support for the important step the Board is contemplating in Notice 2012-43, we believe, and suggest respectfully, that there are a number of appropriate subjects for further consideration by the Board in the future, as follows—

1. Require reporting promptly after contributions are made, and in any event, prior to elections and in time to inform the electorate.

2. Require reporting of payments *made by* underwriters *to* (not only of payments *received from*) other municipal finance professionals, such as financial advisors and election advisors, channeled through bond election campaigns.

3. Make the campaign contribution reports more easily searchable on EMMA by issuer name and by titles of bond issues.

4. Require timely disclosure to the voters of the identities of financial firms paying for the election materials, advertising and staff in support of bond measures; how much those firms are contributing; how much compensation those firms expect to receive from bond issues the voters approve; whether the compensation is contingent and, if so, that the contingent compensation constitutes a conflict of interest; the roles of those parties in preparation of tax rate statements and other information published by issuers in connection with the ballot measures; and the identities of financial advisors and election advisors receiving payments through the structure of bond election campaigns and how much those advisors receive through campaign administration.

5. Do not limit disclosure merely to compensation received by firms in connection with the issuance of bonds when that compensation is in excess of compensation the firms receive in other municipal securities transactions. Rather, the disclosure should be made of compensation in excess of general industry compensation practices for the types of very secure voted general obligation bonds that are involved.

6. Require disclosure of relevant information to investors when firms participating in the bond issues have contributed to election campaigns, and require disclosure of relevant information to investors when the election campaigns to which the underwriters have contributed are administered by municipal advisors. As the Securities and Exchange Commission stated, "such information could indicate the existence of actual or potential conflicts of interest, breaches of duty, or less than arms' length transactions. Similarly, these matters may reflect upon the qualifications, level of diligence, and disinterestedness of financial advisers, underwriters, experts and other participants in an offering. Failure to disclose material information concerning such relationships, arrangements or practices may render misleading statements made in connection with the process ... ." SEC Rel. No. 33-7049, 34-33741, 59 F.R. 12748, 1251 (March 9, 1994).

Once again, Government Financial Strategies strongly supports the direction in which the Board is moving to improve the functioning, efficiency and integrity of the municipal securities market and to protect both investors and issuers.

Government Financial Strategies inc.

Thank you again for this opportunity to respond to the Board's important and very positive request for comment. We support the Board's efforts as expressed in Notice 2012-43, and look forward to future developments in this important area.

Yours truly,
GOVERNMENT FINANCIAL STRATEGIES

Robert W. Doty
General Counsel

MAGIS ADVISORS
public finance consulting

September 14, 2012
Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2012-43 dated August 15, 2012 — "Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business—Bond Ballot Campaign Committee Contributions"

Ladies and Gentlemen:

On behalf of Magis Advisors, I thank you for the opportunity to offer comments on the above matter. The integrity of the municipal securities market has never been more important than it is at this challenging time. The lingering effects of the Great Recession, the astounding developments of several of America's cities entering bankruptcy protection, and the spectacle of city managers being placed under arrest for unethical behavior, all represent a serious challenge to the confidence of investors who supply the capital funds to America's public agencies.

The Board's recent activities with respect to implementation of the provisions of the Dodd-Frank Act are all clearly designed to bolster the integrity of the market. This Release is but another important step in that direction, and the Board is to be congratulated for having the courage to take on this issue.

The comments herein are offered from the perspective of a municipal advisor with more than forty years of experience in the municipal markets, the majority of which has been as a municipal advisor, but a significant portion of which was devoted to the sales and trading of municipal securities. Despite the scope of the lack of applicability of the Notice to municipal advisors because of the unfortunate delay in defining exactly what a "municipal advisor" is, we nevertheless encourage the Board to continue its rulemaking and discussion in this respect. Our expectation is that once the definition of a municipal advisor has been settled, then the precedent for the applicability of the Notice to such advisors will likely have been established through this process.

The Securities and Exchange Commission, and the Board, have long acknowledged that many issuers of municipal securities are small, irregular visitors to the capital markets and are deserving of the protections afforded to such participants as a matter of fairness. Improving the transparency of the economic forces that affect the decisions of these agencies contributes to that fairness and is an important part of overall market integrity.

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As a matter of principle and common sense, Magis is strongly opposed to any circumstance where any market professional is permitted to directly, or indirectly, contribute to bond campaigns that serve the interests of such a participant, often at the expense of the local agency. This is due to simple logic: In such decisions, it is the electorate that is the decision-making body, not the City Council, Board of Directors or the Board of Education. If the tax-paying public is being asked to accept the burden of long-term debt—debt that will produce meaningful fee income to those who recommend, structure and sell it—then the public has the right to be told of the potential for economic gain to those who would influence or recommend the transaction to them. And, the market participant should embrace the idea of such a disclosure, because it is in the best interest of the client, promotes better government, and bolsters the integrity of the market—a market built on confidence.

In our state, for example, this has significant precedent. In an opinion in 2003, the California Legislative Counsel's Office stated, in relevant part that "…it is our opinion that a school district or other local agency may not condition the award of an agreement to provide bond underwriting services on the underwriter also providing campaign services in support of that bond measure or another bond measure proposed by the school district or other local agency."

That precedent seems to have produced a particularly worrisome effect since then. It now appears that underwriters are contributing to school bond election campaigns that are being run by municipal advisors or that the municipal advisor is responsible for taking an advocacy position. Despite some persons characterizing these activities as being "helpful," or "demonstrating commitment to the client's outcome," they are highly dangerous and, in our view, destructive of the objective requirements of the public's trust. First, such activities are in direct violation of state law. California law prohibits the expenditure of public monies on electioneering. Compensating a municipal advisor for activities that *per se* establish the very conflicts that the Board is attempting to address is at the heart of the problem. Second, if municipal advisors wish to be independent, and properly fulfill their fiduciary obligation to the client, it confounds us how that can happen effectively when the municipal advisor knowingly participates in a commercial arrangement that creates a conflict that is both material and undisclosed and which places the advisor's motive to fulfill that duty in doubt.

It is also an unfortunate fact that the idiosyncratic nature of the municipal bond market makes comparison of one school district's bond issue to another exceedingly difficult. The result of this phenomenon is that well-intentioned local government officials have few tools available to them to do due diligence on the essential differences between their service providers. An underwriter or other financial market professional who has made a significant investment of time and effort in promoting or inducing a positive outcome on a bond campaign and who is working on a contingent fee basis has a significant interest in the issuance of the bonds, whether burdening the agency's stakeholders further is a good idea or not.

The concerns I am raising here, and the concerns being addressed by the Notice, are by no means a recent phenomenon. In 1996 for example, the Government Finance Officers Association, the National League of Cities, the National Association of Counties, and other similar organizations, with input from the Securities and Exchange Commission, published an important pamphlet entitled "Questions to Ask

Before You Approve a Bond Issue." In that pamphlet there are two specific recommendations offered to officials in the position to approve a bond issue. The first recommendation asks: "What policies and procedures have we [the agency] developed to determine whether material conflicts of interest exist that need to be disclosed?" In addition, the second recommends that officials should ask outside professionals the following question, among others: "Are there any matters regarding your participation in this transaction about which you should make us aware, including potential conflicts of interest?"

Underwriters and other advisors who seek to guide the decision making process of local agencies enjoy a unique "trust relationship" with those agencies. That relationship must be carefully managed lest it deteriorate into an opportunity for fraud or deceit. In 1963, the United States Supreme Court issued an opinion in the matter of SEC v. Capital Gains Research Bureau that stated, in relevant part, "…failure to disclose material facts must be deemed fraud or deceit within its intended meaning, for, as the experience of the 1920s and 1930s amply reveals, the darkness and ignorance of commercial secrecy are the conditions under which predatory practices best thrive." Undisclosed conflicts of interest must be assumed to be material if, in fact, the beneficiary of such a conflict seeks to avoid its disclosure. If such conflicts are buried in the darkness and ignorance of commercial secrecy, then it follows that a fertile climate for predatory practices may be cultivated, even in 2012.

Broker – dealers acting as underwriters should be presumed to be serving their self interests by recommending financing strategies and bond products that will produce greater compensation to them, so long as the suitability requirement for the customer is being met. This also presumes, of course, that the customer (in this case, the public agency) is sufficiently grounded and knowledgeable about the recommendation to discern the presence of a conflict of interest that might be driving the recommendation. That is clearly not the case in the current situation.

The nature of these conflicts of interest has clear adverse effects on the issuer. These adverse effects are both well recognized and well documented in the financial community. For example, the American Institute of Certified Public Accountants publishes the *AICPA Audit Committee Toolkit* that, among other things, provides specific tools tailored for governmental organizations to identify and manage potential conflicts of interest. A common theme in conflict of interest policies developed by nonprofits and local governments is the concept of an "interested person." Moreover these conflict of interest policies typically define a "material financial interest," as an interest of any kind which, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect the interested person's judgment with respect to the transaction in which it is a party. There can be little doubt that a municipal bond underwriter, or any other municipal market participant who stands to gain from the payment of a contingent fee, meets the definition of an interested person. That is why it is critical that the Board focus its attention on this matter.

We are also concerned that existing G-37 submissions by underwriters occur only quarterly and are exceedingly difficult to search by issuer name because the records are "dealer name-centric." We would strongly encourage the Board to consider a disclosure system that would require more timely disclosure of these conflicts of interest prior to the bond election so that the decision-makers—the

electorate—can have all of the facts necessary to consider whether or not the financial interest is material enough that it reasonably could affect the judgment of the professionals engaged to complete the transaction. The ability to access the data by state or type of issuer would help immensely.

Finally, we are also concerned that there may be compelling reasons to require that disclosure of potential conflicts of interest also be made in official statements in order to avoid introducing error or omission to the issuer's official statement. If so, this would serve the additional purpose of placing the issuer, the investor, and other market participants on notice that there are, or may have been, material financial interests that influenced the judgment of the market professionals who structured and sold the bond issue.

We applaud the Board's direction and focus. We support that direction and focus. We await the positive outcomes that will be produced as a result of this proposed rulemaking.

Very truly yours,

MAGIS ADVISORS

Timothy J. Schaefer
President/Principal Owner

1221 Avenue of the Americas
New York, NY 10020

September 17, 2012

Morgan Stanley

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600,
Alexandria, VA 22314.

Dear Mr. Smith:

Morgan Stanley appreciates the opportunity to comment on Notice 2012-43 (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB"). Morgan Stanley supports the MSRB's proposal and the MSRB's efforts to address pay-to-play practices in connection with bond ballot elections. Morgan Stanley also supports the Securities and Financial Markets Association comment letter filed with the MSRB in response to the Notice. While Morgan Stanley supports the MSRB effort to increase transparency relating to underwriter contributions in connection with bond ballot elections, we respectfully suggest that the Notice does not go far enough.

Since 2008, I have been speaking out about the perception of pay-to-play related to bond ballot contributions by dealers and their municipal finance professionals ("MFP") and the awarding of underwriting assignments to those firms who contributed. In 2009, the Heads of the Public Finance Departments of three of the largest dealers (Citi, JPMorgan and Morgan Stanley) signed a letter expressing our considerable concern about the practice of dealers making bond ballot contributions and suggested an extension of G-37 to limit this practice in line with the G-37 rules on candidate political contributions.

While the MSRB has started to collect data on these bond ballot contributions and we support additional disclosure proposed under MSRB Notice 2012-43 to increase transparency with respect to underwriters and MFP contributions in connection with bond ballot elections. However, we urge the MSRB go further and amend G-37 to limit bond ballot contributions where a dealer is acting as underwriter for the bonds authorized by the bond ballot election.

There have been numerous stories in the past year regarding the serious concerns of pay-to-play practices in connection with bond ballot elections, including the *San Francisco Chronicle* ("Bond Firms Campaign Gifts Linked to Sales Pacts," May 6, 2012) and the *Bond Buyer* ("Brokers Gifts that Keep Giving," January 13, 2012). Of particular note was the observation in the *Chronicle* that in 150 of 155 cases (97%) where a dealer contributed to support a bond ballot election that authorized the bonds the underwriter was hired to underwrite. The continued allowance of this widely perceived pay-to-play practice damages the integrity of the municipal marketplace and allows outsiders (regulators, journalists and politicians) to question the practices of our marketplace.

If you or any staff or board member of the MSRB would like to further discuss this issue, please do not hesitate to contact me directly.

Sincerely,

/s/ Stratford Shields
Managing Director

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September 17, 2012

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
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Alexandria, VA 22314

RE: MSRB Notice 2012-43 – Bond Ballot Campaign Committee Contributions

The National Association of Independent Public Finance Advisors ("NAIPFA") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board (the "MSRB") in regard to MSRB Notice 2012-43 – Request for Comment: Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions (the "Notice").

NAIPFA understands that such contributions are often made to bond ballot campaign committees for the purpose of influencing the selection or retention of underwriters, and are thus the equivalent of the impermissible pay-to-play contributions already banned under current Rule G-37. As such, NAIPFA welcomes the MSRB's determination that such contributions should be disclosed to the MSRB.

In addition, NAIPFA appreciates the MSRB's decision to expand the term "contribution" to include in-kind contributions.

However, NAIPFA is concerned that the proposed amendments to Rule G-37 (the "Amendments") do not go far enough in terms of curtailing the practice of contributing to bond ballot campaign committees (the "Practice") and will likely not have a significant impact thereon. NAIPFA acknowledges that these disclosures represent a positive first step towards policing this Practice, but hopes that the MSRB will put in place a ban similar to what currently exists with respect to the pay-to-play prohibitions contained within current G-37(b), or at least limit the Practice.

Overall though, NAIPFA believes that the Amendments will help protect the integrity of the municipal securities market by creating a more transparent environment. However, NAIPFA is unsure how the Amendments alone will benefit issuers or the public interest since the Amendments do not prohibit or limit the Practice. Such a prohibition or limitation would likely lead to a more competitive underwriting selection process, which in turn would result in financial benefits to issuers and taxpayers alike.

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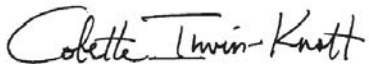
NAIPFA believes that any burden, incremental or otherwise, placed upon municipal market participants in connection with the imposition of the Amendments will be outweighed by the benefits that the Amendments will have to the municipal market in terms of improving hiring practices, market transparency, and the policing of the Practice.

NAIPFA understands that although rules relating to Municipal Advisors have, for the most part, not yet been developed and/or implemented, that the MSRB may be interested in moving forward with applying the Amendments to municipal advisors. NAIPFA is supportive of this and believes that municipal advisors should be subjected to such rules when and if adopted. In addition, NAIPFA would support the inclusion of municipal advisors within the provisions of current Rule G-37 and, in particular, those portions contained within Rule G-37(c) and (d) in order to prevent municipal advisors from circumventing their disclosure obligations as well as the ban on campaign contributions. If, however, it is determined to limit the scope of the inclusion and only make the Amendments applicable to municipal advisors, NAIPFA urges the MSRB to also apply Rule G-37(c) to municipal advisors for the reasons set forth above.

Sincerely,



Colette J. Irwin-Knott, CIPFA
President, National Association of Independent Public Finance Advisors

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
Liban Jama, Counsel to Commissioner Aguilar
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

sifma
Invested in America

September 17, 2012

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2012-43: Request for Comment on Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2012-43[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on a draft amendments to Rule G-37 on political contributions and prohibitions on municipal securities business, as well as Rule G-8 on books and records. The draft amendments require an increase in the type of information publicly disclosed by brokers, dealers and municipal securities dealers ("dealers") regarding any contributions to bond ballot campaigns. SIFMA and its members generally support transparency as a way to eliminate any possible perception of impropriety and were supportive of the MSRB's initial disclosure regime for bond ballot campaign contributions.[3] However, we do have some concerns about specific aspects of the amendments as we will describe more fully below.

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[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] MSRB Notice 2012-43 (August 15, 2012).

[3] *See*, letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated August 7, 2009 ("Prior Letter"), in response to MSRB Notice 2009-35 (June 22, 2009).

I. Revision of the Definition of "Contribution"

The MSRB has proposed to revise the term "contribution" to 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. This is a significant change from the current requirement that dealers provide information respecting in-kind donations only to bond ballot campaigns and greatly expands the scope of the reporting obligations to cover frequent routine communications between issuers and underwriters. SIFMA feels strongly that this proposed amendment blurs the line between work done for the bond ballot campaign committee which is to be reported on Form G-37 and traditional work for the issuer completed as part of the public finance transaction. In its role as underwriter, dealers routinely have discussions with issuers and provide them with quantitative analyses reflecting all different types of financial scenarios, including increased indebtedness, refundings or refinancings, and changes to cash flows. These types of quantitative analyses are frequently performed for a variety issuers as part of a range of traditional public finance services, as the need for such analyses are independent of the presence of a bond election. For these reasons, any work done for the issuer should not be deemed to be a reportable contribution. SIFMA and its members feel that only in-kind contributions to the bond ballot campaign committee itself should be reportable, and that references to the issuer should be struck from this part of the amendment to the rule. SIFMA agrees that work done for or contributions made to the actual bond ballot campaign committee should be disclosed, as the bond ballot campaign committee is a separate legal entity from the issuer. However, SIFMA feels that any other collateral work provided on behalf of the issuer should not be reported on Form G-37, as much or all of this work blends over into traditional public finance, forms a substantial part of the work of some underwriters and it would be extremely burdensome on the dealer community to separately distinguish, track, quantify and report this information to the MSRB.

II. Requiring Name of Issuer

The MSRB has proposed to require the 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 municipal finance professionals ("MFPs") or non-MFP executive officer (other than a *de minimis* contribution, or applicable political action committee ("PAC"), to be included in the quarterly report covering the contribution (a "Qualifying Contribution"). SIFMA and its members feel that this information is always known by the dealer, and would

be beneficial information to include in Form G-37. This increase in transparency would create more benefits than burdens on the regulated dealer community.

III. Requiring Complete Date of Engagement

The MSRB has proposed to require dealers to disclose the complete name of the primary offering resulting from the bond ballot campaign for which such dealer engages in municipal securities business and to which a Qualifying Contribution was made by the dealer, its MFP or non-MFP executive officer or applicable PAC, and to also disclose the specific date 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.

First, the date the dealer was selected to engage in such municipal securities business may not be clear or ascertainable by the dealer. Typically engagement letters are not done with issuers for underwriting services,[4] and there may not always be a bond resolution or other formal appointment of the dealer as underwriter before the signing of the bond purchase agreement. In fact, each issuer typically has its own method for the selection and final approval of underwriters, which makes it difficult or impossible to standardize the process. In the absence of an ascertainable date for the formal engagement of the underwriter by the issuer, SIFMA suggests using the sale date, on which the signing of the bond purchase agreement occurs, as the "date of engagement". However, using the sale date may also be problematic for the purposes of this amendment, as the dealer in a negotiated offering may have been informally chosen as the underwriter for quite some time ahead of the sale date. Therefore, any disclosable contributions made to the bond ballot campaign committee by the dealer or its personnel after the dealer began work on the bonds may appear from the filings to have potentially influenced the issuer's choice of underwriter because the underwriter cannot point to a date of formal engagement, however in fact any such contributions would have occurred after the dealer was chosen as underwriter and not have influenced the issuer's choice of underwriter.

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[4] It is worth noting that MSRB Rule G-23 obligates a dealer acting as financial advisor to enter into a written agreement for providing financial advisory services to the issuer. Due to the significant difference in the nature of the relationship between an issuer and its financial advisor, on the one hand, and an issuer and a dealer in negotiations to conclude an arms-length purchase and sale transaction on the other, there is no parallel engagement requirement for underwriters.

Second, SIFMA suggests that it is critical that any such rule change be effective on a going forward basis from the effective day of the rule, including any potential look back period, so as to permit compliance regimes to be developed. [5]

Third, SIFMA recognizes that dealer contributions to bond ballot campaign committees and any resultant municipal bond offerings should be able to be tracked historically, irrespective of the amount of time that has passed between the bond ballot election and the issuance of the bonds authorized thereto. However, SIFMA notes that individual employees commonly move between firms, and tracking historical individual MFP or non-MFP executive officer contributions to bond ballot campaigns and any resultant municipal bond offerings for an undetermined amount of time until all the authorized bonds have been issued would create significant compliance burdens for dealers, particularly with respect to new employees. SIFMA proposes that there be a two-year look back for contributions by current individual MFPs or non-MFPs executive officers for bond ballot campaign contributions that result in a municipal bond offering underwritten by the dealer, to be phased in from the effective date of the rule.[6] SIFMA feels the compliance risk is significant for a dealer who may unknowingly fail to report a transaction that may have a related years-old contribution the dealer was unaware of, which was made by a new MFP or non-MFP executive officer. SIFMA feels that transactions underwritten by the dealer after a contribution was made to a bond ballot campaign committee by a former employee should not need to be reported.

The ambiguities pointed out above are of concern as they may cause “false positives”, or filings which may appear to allude to suspect activity because of an artificial reporting paradigm, but where no impropriety existed. Therefore, SIFMA urges the MSRB to not expand the Form G-37 disclosure to include the specific date the dealer was engaged. Also, SIFMA urges the MSRB to ensure that the rule is applied from its effective date forward and that there is a limitation on reporting individual contributions to coincide with the two-year look back already found in Rule G-37.

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[5] No contributions made, or transactions sold or issued before the effective date of the rule should be reportable.

[6] Any applicable look back provision should not take into account contributions made, or transactions sold or issued before the effective date of the rule.

IV. Requiring Dealers to Disclose Specific Date a Contribution Was Made

In connection with the existing requirement to disclose the contributions to bond ballot campaigns, the MSRB has proposed to also require the dealer to provide the specific date on which a Qualifying Contribution was given by the dealer to the bond ballot campaign. The potential burden of this proposal depends on the number of non-*de minimis* reportable contributions that need to be tracked and reported to the MSRB. For larger firms with many employees, or firms active in states where such bond ballot campaigns are common, the burden to track these additional dates and downstream transactions could be significant.

V. Requiring Dealers to Disclose Reimbursements

The MSRB has proposed to require 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. SIFMA and its members feel that these payments or reimbursements are not common and should be disclosed. Additionally, any such payments would be known to the dealer and disclosure would not cause much burden on the dealer. Finally, it would be material if any such payments were made, and the disclosure of any such payments would shine a light on this behavior. Therefore, SIFMA supports the requiring the disclosure of any such payments or reimbursements.

VI. Application to Municipal Advisors

SIFMA and its members feel strongly that there should be a level playing field for regulated parties. To that end, any of these amendments that impact dealers, as well as the rest of the provisions of Rule G-37, should also be applied to municipal advisors as soon as practicable.

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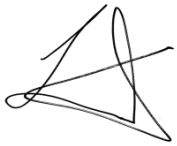
SIFMA and its members are supportive of additional transparency to eliminate any perception of impropriety related to bond ballot campaign contributions. However, we do have the specific concerns listed above regarding the draft amendments. We would be pleased to discuss any of these comments in

greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Ernesto A. Lanza, Deputy Executive Director and Chief Legal Officer
Leslie Carey, Associate General Counsel