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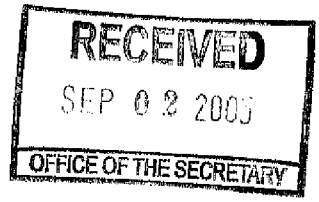

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File Number SR-MSRB-2005-12; Comments to Proposed Amendment to and Interpretations of MSRB Rule G-37

Dear Mr. Katz:

UBS Financial Services Inc. (the "Firm") appreciates this opportunity to respond to Municipal Securities Rulemaking Board ("MSRB") Notice 2005-36 (SEC Release No. 34-52235, the "Notice") issued by the MSRB on June 21, 2005 and filed with the Securities and Exchange Commission ("SEC"), in which the MSRB proposed an amendment to Rule G-37 and certain Questions and Answers ("Q&As") regarding the ability of broker-dealers and municipal finance professionals ("MFPs") to make and solicit contributions to political party and PAC committees. The Firm has an interest in this Rule as it is one of the most active participants in the municipal securities industry ("Industry"), and indeed last year was the top-ranked Industry underwriter in the United States, managing issuances worth over $46 billion.

The Firm has consistently supported the elimination of pay-to-play practices. We further support the MSRB's efforts to close any loopholes that may be used to make contributions that dealers may reasonably foresee will make their way to issuer officials.

The Firm joins The Bond Market Association ("TBMA") comments concerning the Notice, detailed in TBMA's written response to the SEC's request for comments. For all the reasons expressed in those comments as well as the arguments below, the Firm requests that the SEC: (1) reject the proposed Q&As as they relate to contributions to party committees and PACs because they do not

establish clear Constitutional standards upon which the Industry may rely; (2) alternatively, create an express exemption from the proposed Q&As for contributions made to national party committees and federal leadership PACs (controlled by members of Congress), given the lack of a nexus between these federal entities and state and local issuer officials; and (3) modify the amendment to the Rule prohibiting solicitations of contributions to a state or local party committee so that broker-dealers and MFPs are permitted to solicit contributions to the same extent they are able to make contributions.

Since it was enacted, Rule G-37 has significantly reduced the political contributions made by dealers and their MFPs. As a result, we believe the Rule has significantly reduced, if not eliminated, pay-to-play practices in the Industry. This success comes with a price, however, because the Rule also has the effect of denying certain MFPs the right to participate in the political process and creating significant compliance burdens for the Industry. Before the SEC approves what we believe to be a significant expansion of the scope of the Rule, we urge that it consider carefully the impact and implications of the proposed expansion, among which are that the Rule would for the first time, purport to regulate activity that does not involve a dealer or MFP giving financial support to elected officials with influence over the issuance of negotiated municipal securities transactions ("Issuer Officials").

Rule G-37's stated purpose is "to ensure that the high standards and integrity [of the Industry are maintained] to protect investors and the public interest." We applaud that goal and support efforts to advance it. However, G-37 is limited by its terms to political contributions made to Issuer Officials. The Rule does not encompass other interactions and relationships that could possibly affect the relationship between Issuer Officials and Dealers. The proposed interpretation of the Rule goes beyond the stated goal of G-37 and beyond the regulation of political contributions to Issuer Officials. Instead, the proposal could restrict thousands of MFPs' contributions that have absolutely no relation to Issuer Officials. Even where there is no cause to restrict contributions, the Q&As require probing and intimidating question of Dealer employees' personal political activities. The vagaries in the proposed Q&As would impose new and unwarranted restrictions on Constitutionally protected political activity without any clear indication that such a vast expansion of the Rule is warranted.

A. The Industry Needs a Clear Objective Uniform Standard

The Q&As would expand the scope of G-37 because of the new ways that the MSRB expects Dealers to scrutinize party and PAC contributions. The proposed Rule, for the first time, purports to classify some contributions as indirect contributions to Issuer Officials even if the money in question is never given to any Issuer Official. As a result, contributions to parties and PACs by a dealer or its MFPs could result in a ban on conducting municipal securities business. This is a very severe consequence and thus, it is critical that a clear objective standard be applied before such a penalty can be imposed.

The Q&As do not establish such a standard, but rather establish a subjective standard that would be difficult and burdensome to administer. The Notice states:

> In order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce

> written supervisory procedures . . . . For example, a dealer's written supervisory procedures might provide that, if the dealer or any of its MFPs want to make payments to political parties or PACs, the dealer must perform adequate due diligence **prior** to allowing political party or PAC payments by the dealer or its MFPs to reasonably ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[9] Such due diligence also might include inquiring about and documenting the intent or motive in making the payment, whether the party payment or PAC contribution was solicited by anyone, and if so, the identification of the person soliciting the party payment and a record of written solicitations. This information will assist the dealer in determining whether the facts and circumstances surrounding the payment support the reason given for making the payment.

This interpretative guidance for Rule G-37 is vague and will lead to disparate application. The due diligence suggested requires a dealer to have a compliance system that is able to determine the MFPs "intent or motive" in making the contribution, and make decisions based on those subjective criteria. Assuming a broker-dealer can design an effective compliance system to ascertain motivation with a fair degree of certainty, the Q&A is unclear because it fails to define the motivation(s) that should result in a contribution being classified as an indirect contribution to an Issuer Official. Moreover, the Q&A exceeds both the language in G-37 as well as Constitutional limitations, as it purports to restrict contributions based on motivation and intent regardless of whether the money is being given, directly or indirectly, to an Issuer Official.

In the eleven years since the adoption of G-37, the Industry developed policies and procedures based in large part on Q&A and other interpretive guidance from the MSRB. This custom and practice, which we believe has been fairly consistently applied by the Dealer community, requires Dealers and their MFPs to follow their money and get assurances that their money would not be contributed to Issuer Officials. It was possible to administer this standard and to take steps to prevent broker-dealer and MFP money from being contributed to Issuer Officials. Now, the MSRB has replaced the clear test with a vague and uncertain standard that puts a Dealer at risk of a possible ban on business if it or its MFPs contribute to party or PAC committees. [1] The proposed Q&A should be rejected in favor of existing law that creates a clear test that does not involve assessments of subjective motivations.

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1 The Q&A also vastly increases the burden on Dealers' compliance systems. By shifting the required due diligence from an inquiry into the committee or account to which the proposed contribution is being made to an inquiry into motivations, the MSRB is by definition requiring that each approval involve separate and distinct due diligence. Under existing law, once satisfied that a particular political committee was not contributing to Issuer Officials, a Dealer could make contributions to that committee and permit its employees to do likewise. The proposed Q&As will require due diligence for each party or PAC contribution proposed, regardless of the Dealer's knowledge of the organization's activities.

B. National Party Committees and Federal Leadership PACs

While there may be party committee and PAC contributions that are in reality indirect contributions to Issuer Officials, there are clearly some party and PAC committees that do not act as a conduit for Issuer Officials. With regard to the former, these contributions have been prohibited since 1994 and there is no reason to create new due diligence standards. National party committees and federal PACs clearly fall into the latter category. These are federal organizations that do not influence the awarding of municipal bond business and therefore should not be subject to the already broad scope of G-37. MFPs and dealers do not influence Issuer Officials by making contributions to National Party Committees and federal leadership PACs and there is simply no reason to subject these organizations to the due diligence suggested in the Q&A. To the contrary, to the extent that MFPs and Dealers (or Dealer PACs) make contributions to national party committees and federal leadership PACs, these contributions generally relate to the individual or organization's concerns regarding federal legislation and general political activity – these contributions rarely relate in any way to Issuer Officials. The MSRB has recited no reason for its proposed expansion of the rule. It should be sufficient, as it is under existing MSRB guidance, to get assurances that the Dealer or MFP's contribution will not be used to contribute to an Issuer Official.

Accordingly, the Firm submits that if the SEC approves the Q&A it should simply exempt the six national party committees and all federal leadership PACs, recognizing that some level of tangential "support" is too remote to justify extensive due diligence before an MFP may contribute. Rule G-37 prohibits contributions to Issuer Officials, and absent political contributions being made by a dealer or MFP to an official of an issuer, the Rule should not attempt to regulate the subjective relationship between elected officials and political committees or between elected officials and dealers.

The ambiguity in the proposed Q&As, and requirement that dealers conduct due diligence before permitting these contributions, will create uneven standards and behavior within the Industry. The lack of a clear standard in the proposed Q&As has already produced varying interpretations and effects. Based on the ambiguities in the Notice, the Firm has information indicating that dealers are permitting contributions to party committees and PACs based on differing standards, and reaching different conclusions concerning the same federal leadership PAC. These subjective and disparate compliance systems lead to differing policies and decisions regarding permissible action by employees. What is worse, however, is that the Dealer remains open to being second-guessed by the NASD or other regulator with respect to any contribution it permits. Given the First Amendment issues at stake, this is an area of the law where consistency is important and uneven application could result in a violation of employees First Amendment Right to contribute to a candidate of his or her choice.

C. First Amendment Concerns

This Rule implicates the First Amendment rights of both Dealers and their employees, including both their speech rights and their rights of association. MFPs have the right to speak, in the form of making political contributions. MFPs also have the right to associate with political party organizations. In many cases, affiliation involves the payment of dues or other moneys to the party committee. The

interpretation of Rule G-37 promulgated in the Notice could stifle such payments, regardless of amount or reasons, if the party committee supports an Issuer Official. To implement the policy suggested in the Q&A, are dealers required to enact due diligence systems that prohibit all MFPs from joining all political parties that at any level directly or indirectly support one or a limited number of issuer officials? Should dealers require due diligence for contributions to federal leadership PACs and other federal PACs, even if there is no nexus between those federal entities and state and local issuer officials? Should dealers ban employee MFPs from joining a state party organization whose chair is the Governor of the State if they are required to pay dues to join?

The due diligence suggested by the MSRB proposed Q&A is particularly troublesome under the First Amendment. Under the terms of the Q&A, if an employee wishes to make a contribution to any party committee or PAC, for example, the Republican National Committee or Democratic National Committee (or the National Republican Congressional Committee or Democratic Congressional Campaign Committee), the dealer should "inquir[e] about and document[] the intent or motive [of the employee] in making the payment." Thus, the MSRB is suggesting that the dealer should make inquiry into personal political beliefs and create files documenting the motivations of its employees before allowing contributions to be made. The Firm believes, based on its experience, that the majority (if not all) employees' contributions would continue to be permissible because, to our knowledge such contributions seldom (if ever) relate in any way to Issuer Officials. Contributions to the RNC/DNC are generally motivated by political participation and involvement with a party, while contributions to the NRCC and DCCC are generally motivated by a desire to see a political party control a House of Congress. These are the types of motivations that the suggested due diligence will likely uncover – it is unlikely that the due diligence suggested will reveal that MFPs are attempting to influence Issuer Officials with these proposed contributions. However, to require an employer to make these inquiries before an employee may make a contribution may intimidate and offend employees who are simply attempting to exercise their Constitutional rights to contribute. There is simply no reason to require intrusive investigation into personal political activities of Dealer employees simply because they may work in (or supervise people working in) the Industry.[2] This important constitutional concern was not resolved in Blount v. SEC[3] (in which the court upheld the constitutionality of Rule G-37) because that decision was based on a Rule that allowed contributions to party committees and PACs and did not impose a vague standard or intimidating due diligence on such contributions.

Quite simply, the Firm whole-heartedly supports the elimination of pay-to-play practices, and does not permit direct or indirect contributions by MFPs to any Issuer Officials, except those expressly permitted by MSRB Rule G-37. However, if the money being contributed is not being given, directly or indirectly, to any Issuer Officials, there is no cause to restrict or inquire into the First Amendment activities of employees.

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2 The broad impact of this Rule is particularly problematic when viewed with consideration of the broad definition of municipal finance professional. G-37 requires classification of a significant number of employees as MFPs who do not work on a day-to-day basis in the municipal finance industry.

3 Blount v. Securities and Exchange Commission, 61 F.3d 938 (D.C. Cir. 1995).

D. The Rule Amendment Prohibiting Solicitation Should Be Symmetrical to the Contributions Ban

The Notice proposes an amendment to Rule G-37 that would completely prohibit MFPs from soliciting contributions to any state and local party committees. However, the Q&As interpreting the Rule permit MFPs to make contributions to party and PAC committees pursuant to certain due diligence requirements. It is illogical to impose a greater prohibition on soliciting contributions than on making contributions. By definition, if an MFP is permitted to make a contribution to a political committee, that contribution is not an indirect contribution to an official of an issuer. Under such circumstances, what is the basis to prohibit MFP solicitations on behalf of that committee? Currently, Rule G-37's prohibitions on making and soliciting contributions are symmetrical -- broker-dealers and MFPs are prohibited from making or soliciting contributions to issuer officials. The same approach should be taken in the proposed amendment by permitting broker-dealers and MFPs to solicit contributions on behalf of state and local party committees to the same extent they are allowed to make contributions to such committees.

Conclusion

Based on these concerns, the Firm believes that the expansion of the Rule suggested in the Notice should take the form of an amendment to the Rule that sets objective and symmetrical standards for the regulation of political contributions and solicitations. The MSRB should not accomplish a new ban by reinterpreting existing G-37 language and requiring broad-reaching due diligence systems that will consume time and discourage legal and permissible contributions. The Firm urges the SEC to reject the proposed Q&As which impose new, vague and unnecessary burdens on permissible political speech.

Thank you for soliciting comments as a part of the SEC's review of the Rule. Please do not hesitate to call me with any questions, or if I can be of any further assistance.

Respectfully submitted,

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Managing Director
Manager, Municipal Securities Group

cc: ***Securities and Exchange Commission***

The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Annette L. Nazareth, Commissioner
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