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

Re: Draft Amendments to Rule G-37 and Draft Q&As
MSRB Notice 2005-11, February 15, 2005

Dear Ms. Walsh:

The ABA Securities Association¹ ("ABASA") is responding to the request of the Municipal Securities Rulemaking Board ("MSRB") for comments on its draft amendments to Rule G-37 and draft Questions and Answers ("Q&As") concerning indirect violations of Rule G-37.

The MSRB has proposed the draft amendments as a result of its continuing concerns about contributions to issuer officials by municipal securities dealers and municipal finance professionals ("MFPs") through conduits—*i.e.*, political parties, PACs, affiliates, consultants, lawyers, or spouses. In addition, the MSRB is concerned that prior guidance requiring dealers to develop procedures to ensure that the funds will not be used to support one or a limited number of issuer officials is insufficient.

¹ The ABA Securities Association (ABASA) is a separately chartered trade association and non-profit affiliate of the American Bankers Association whose mission is to represent the interests of banks underwriting and dealing in securities, proprietary mutual funds and derivatives before Congress, federal and state governments, and the courts. The views in this letter are also endorsed by the ABA. ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership -- which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks -- makes ABA the largest banking trade association in the country.

ABASA Position

ABASA fully supports the elimination of “pay-to-play” in awarding negotiated municipal securities business, whether directly or indirectly. The comments in this letter refer only to affiliated PACs to which MFPs are permitted to contribute. It does not address affiliated PACs that (1) do not accept contributions from the dealer or its MFPs and (2) do not coordinate their activities in any way with the dealer or its MFPs. Indeed, we understand that such PACs are entirely outside the scope of Rule G-37.

As discussed more fully below, ABASA seeks clarification of some of the terms in Q&A #1.

Background

From the perspective of municipal securities dealers affiliated with banking organizations, the proposal would prohibit dealers and their municipal finance professionals ("MFPs") from requesting that their affiliated political action committees (PACs) make or coordinate any contributions:

- Directly to issuer officials with which the dealer is engaged or is seeking to engage in municipal securities business; or
- To a political party of a state or locality where the dealer is engaging in or seeking to engage in municipal securities business.

In addition to the proposed prohibitions in the rule itself, the MSRB has proposed draft Q&As that encourage dealers to establish information barriers between the dealer, its MFPs and any affiliated PAC including:

- Prohibiting the dealer or its MFPs from recommending, nominating, appointing or approving the management of affiliated PACs;
- Prohibiting sharing with the dealer or its MFPs of the affiliated PAC's meeting agenda, schedule or minutes;
- Prohibiting identification of prior, planned or anticipated affiliated PAC contributions; and
- Prohibiting information about prior negotiated municipal securities business as well as current and planned solicitations.

The Q&As also suggest that the dealer and its MFPs ensure, prior to making any contributions, that the affiliated PAC does not limit its contributions to one or a limited number of issuer candidates directly or through contributions for other state or local parties.

Moreover, dealers would also be encouraged to seek and document the reasons why their MFPs make contributions to an affiliated PAC.

Discussion

1. Q&A #1

Information regarding municipal business and PAC contributions. In the case of the suggested information barrier concerning past and current municipal securities business, ABASA believes that the MSRB's suggestion is unrealistic. While it certainly would be possible to prohibit the dealer and its MFPs from directly providing such information to the PAC, the information itself is public. News reports of past, current and future deals routinely run in industry publications such as the *Bond Buyer* as well as in local newspapers, and information about past business is publicly disclosed in Rule G-37 Reports. Moreover, dealers should be able to issue press releases, *etc.*, when they generate business. Publicizing this type of news should not be restricted simply because PAC members may learn about it.

With respect to the suggested prohibition on making PAC contributions public, ABASA agrees that PACs should not directly provide information on planned or anticipated contributions to MFPs.

Prior assurance and reason suggestions. Although Q&A #1 suggests that municipal securities dealers merely consider whether to implement the "prior assurance" and "reason" suggestions, ABASA believes that these suggestions are too vague for banks to rely on them except in the most "black and white" cases, *i.e.*, where the PAC doesn't contribute to any issuer officials.

The MSRB has provided no parameters for the prior assurance requirement if a PAC contributes to more than one issuer candidate. For example, are contributions to three issuer candidates permissible—10 issuer candidates—50 issuer candidates? What if the distributions are made across a broad number of candidates, but the bulk of the money goes to a single issuer candidate? Will PACs then have to calculate the percentage of total contributions each single contribution represents? ABASA believes that the MSRB should provide a range of examples so that dealers are not significantly at risk of being second guessed by examiners from the National Association of Securities Dealers.

With respect to the suggestion that dealers ascertain the reasons why MFPs make contributions, ABASA believes that requiring each individual to provide a reason for making a contribution to his/her company PAC would be burdensome for PACs to administer. More importantly, we believe that such a requirement would definitely chill contributions. This is because most employees want to help their companies prosper and feel it is their obligation to help their companies to help by contributing, ABASA believes, however, that no matter what reason a bank gives for the requirement, employees will almost certainly believe that the information is for company purposes or to see who is “loyal.”

2. Q&A #2

With respect to Q&A #2, it appears that the MSRB has, in effect, outlawed contributions to the housekeeping and similar accounts of state and local political parties. Specifically, the statement in the Q&A that because money is fungible, contributions to housekeeping accounts could free up other money that could in turn, be used to support one or a limited number of issuer candidates, seems clearly designed to put such contributions in the highest-risk category. Despite staff assurances that dealers would not have to track and document how their contributions were actually spent, there would seem to be no other way for a dealer to make sure it's affiliated PAC was in compliance with rule G-37.

3. Impact on Bank-Affiliated Dealers

ABASA believes the amendments and proposed Q&As reflect a misunderstanding of the way bank PACs operate. Typically, a bank solicits contributions for its PACs during a single, limited event each year, typically two-three weeks in duration. The solicitations are not related to the political cycle; that is, contributions may be solicited six months or more prior to any contributions being made. While some banks solicit contributions only from higher-level employees, other organizations may solicit many thousands of employees, the vast majority of whom have nothing at all to do with public finance. Employees are offered the opportunity of giving through a single, one-time contribution, or through payroll deductions. Employees who choose to make contributions—in amounts as little as \$50 to 100—generally do so in order to help their company be more successful, not because they are trying to influence business with a particular issuer.

With respect to payroll deductions, ABASA believes that the very fact that such arrangements generally involve monthly or semi-monthly deductions mitigates against any perception that such contributions are “earmarked” for or intended to influence a particular issuer.

As the MSRB is well aware, bank PACs contribute to numerous candidates for public office, including candidates that are issuer officials. When bank PACs contribute to such officials, these contributions are based on their overall holding company-wide financial services relationships with issuers as well as candidates' positions on legislation important to the banking organization.

Current environment. As a result of enforcement actions by the Securities and Exchange Commission ("SEC"), banking organizations have largely severed ties between their public finance operations and their PACs. That is, the information barriers suggested by the MSRB in its draft Q&A #1 generally are already in place, (subject to our comments on the public nature of municipal business).

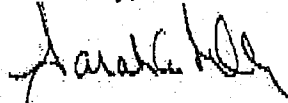
Accordingly, many banks simply prohibit MFPs from making *any* contributions to state or local PACs. Others permit MFPs to contribute *only* to federal PACs that make contributions only to candidates for federal office who are not currently issuer officials. Finally, other bank PACs may not have the wherewithal to create a number of separate PACs. In all of these instances in which MFPs are permitted to contribute to bank-affiliated PACs, ABASA recognizes that in accordance with Q&A #1, the dealer has the discretion to decide the extent to which it will implement the prior assurance and reason suggestions.

Conclusion

In conclusion, ABASA recognizes that where MFPs are permitted to contribute to affiliated bank PACs, dealers have discretion about the extent to which they implement the suggested prior assurance and reason requirements. However, we urge the MSRB to provide examples to clarify the parameters of the information barriers and prior assurance and reason suggestions.

ABASA would be pleased to discuss these issues further with MSRB staff. If there are questions or comments, please contact the Cris Naser at 202-663-5332 for more information.

Sincerely,



Sarah A. Miller