Griffin, Kubik, Stephens
& Thompson, Inc.

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August 29, 2005


Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
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:

As indicated in the MSRB's filing with the Commission, we submitted the attached comment letter to the MSRB on March 30, 2005. We also participated in the preparation of the comment letter submitted to the MSRB by The Bond Market Association (TBMA), as well as the comment letter being submitted by TBMA to the SEC.

While we agree that "pay to play" has no place in the solicitation and awarding of municipal finance business, we reiterate our opposition to the current Rule G-37 regulatory apparatus and strongly suggest to the Commission that this proposed Amendment and Interpretations make the case for scrapping that apparatus and starting over.

As indicated in our comment letter to the MSRB, we believe that Rule G-37 is blatantly unconstitutional. It directly affects the ability of a large number of individuals to participate in the political process. The MSRB's citations to Blount vs. SEC and McConnell vs. Federal Election Commission are a very weak argument for continuing this regulatory apparatus. It is not our purpose here to brief the constitutional arguments. Suffice it to say that Blount was never decided by the Supreme Court, and McConnell was decided by a closely divided Supreme Court whose composition is about to change. Furthermore, the underlying legislation which was the subject of McConnell has been the subject of a bitter political fight and for better or worse was enacted by the United State Congress and signed by the President of the United States, all of whom are answerable to the votes of the American people. G-37 by contrast was adopted by a quasi-regulatory body not even appointed by those elected officials. Therefore, it behooves the Commission, as the oversight agency for the MSRB, to consider whether regulation which tramples on the first amendment rights of the electorate can be promulgated by a body such as the MSRB.

It is clear from TBMA's comments to both the MSRB and the Commission that G-37 has become unduly complicated. The MSRB says this proposed amendment and interpretation mean one thing. Others believe they mean something else. When a regulation that has constitutional implications becomes this convoluted and impossible to understand, it proves how unworkable G-37 has become. The idea that a firm must have complex procedures to determine the inner workings of a political party to ascertain the usage of a contribution to its general fund or figure out which of its affiliated employees might be deemed to be soliciting municipal finance business because of an introduction to someone has the proverbial "chilling" effect on political participation, a form of free speech. At the very least, if the Commission does not wish to scrap the G-37 apparatus, it should insist that the current proposed amendment and interpretation be far more specific as to what conduct is covered and which broker-dealer or affiliated representatives are covered.

As we indicated in our letter of March 30, 2005 to the MSRB, we would respectfully suggest that full and immediate disclosure required of the recipient (a web posting seems quite feasible) would be more effective in policing this arena. The NASD, bank regulators, and state and federal criminal authorities clearly have authority to take action in cases that involve influence peddling or outright bribery. It seems more logical to focus attention on those (comparatively few) municipal officials who might abuse their office, than to truncate the constitutional rights of an ever-expanding universe of individuals connected – however remotely – to a municipal securities dealer.

In conclusion, it is time for the Commission to take a fresh look at Rule G-37 and hopefully conclude that it should be scrapped. If not, the Commission should demand far more specificity in the MSRB proposed amendment and interpretation as to what conduct is covered and which individuals are covered.

Sincerely,

David M. Thompson
President

Robert J. Stracks
Counsel

/ays

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March 30, 2005


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

**RE: MSRB Notice 2005-11—Rule G-37**

Dear Ms. Walsh:

We have specific concerns with the thrust of the proposed amendments to and interpretations of Rule G-37. Unfortunately, the proposed amendments would add to what we see as fundamental flaws in G-37 in general, making it difficult to decide the beginning point of our commentary, which we will nonetheless attempt.

We have opposed the concept of G-37 from its very conception as an infringement upon First Amendment rights. We continue to believe that the Rule is blatantly unconstitutional both as to its substance and its promulgation by an administrative body as opposed to being enacted by Congress. There are numerous means available to correct any perceived abuses in the awarding of municipal business without restricting the ability of U.S. citizens to participate in the political process.

Our specific comments are related. The latest proposed amendments and interpretations make use of the term *"affiliated entity of the broker, dealer or municipal securities dealer"* and *"affiliated PACs"* without offering definitional guidance. Even if one does not agree that the basic structure of G-37 is unconstitutional, it is undeniable that it *does* touch upon constitutional freedoms and therefore ought to be extraordinarily specific. Further, regulatory zeal to ferret out *"indirect"* violations must be tempered with the knowledge that there are related entities to broker-dealers that have nothing whatsoever to do with the municipal business. It must be made clear that representatives of those entities have not given up their constitutional rights because of an affiliation with a securities dealer that is in the municipal business. Our reading of G-37 tells us that if one of those related representatives would happen to introduce us to a potential source of municipal finance business while at the same time making political contributions to an official of a completely different local political body, the broker-dealer could face a G-37 compliance problem. If the MSRB proposes to regulate such tenuous connections, it should at least define them specifically; potentially affected parties would be forewarned and clarity would allow constitutional measurement.

While we enthusiastically agree that *"pay to play"* has no place in the awarding of municipal finance business, we question both the propriety and effectiveness of the MSRB's tactics to date. The very fact that the Rule (G-37) seems to require constant expansion and amendment testifies to the inefficiency of this approach.

We would respectfully suggest that full and immediate disclosure ***required of the recipient*** (a web posting seems quite feasible) would be more effective in policing this arena. The NASD, bank regulators, and state and federal criminal authorities clearly have authority to take action in cases that involve influence peddling or outright bribery. It seems more logical to focus attention on those (comparatively few) municipal officials who might abuse their office, than to truncate the constitutional rights of an ever-expanding universe of individuals connected – however remotely – to a municipal securities dealer.

Sincerely,

David M. Thompson
President

Robert J. Stracks
Counsel

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