



## MSRB RULE G-37

**THE ITEMS BELOW SERVE AS A DISCUSSION OF THE NON-EXHAUSTIVE LIST OF ISSUES RELATED TO MSRB RULES G-37, RECORDKEEPING RULES G-8 AND G-9, AND FORMS G-37 AND G-37X THAT NON BROKER/DEALER AFFILIATED MAs AND MA FIRMS SHOULD CONSIDER WHEN DEVELOPING THEIR OWN POLICIES, PROCEDURES AND PRACTICES. MAs ARE STRONGLY ENCOURAGED TO REVIEW THE FULL RULEMAKING AND CONSULT COUNSEL IN THEIR MISSION TO DEVELOP AND IMPLEMENT ROBUST POLICIES AND PROCEDURES.**

**THIS DOCUMENT SHOULD NOT BE VIEWED AS A SAFE HARBOR FOR COMPLIANCE OR PRACTICE PURPOSES.**

### **Professionals Covered in the Document**

The MSRB has defined and classified various types of MA professionals and provided information related to each type in its Rule G-37. This document provides information with respect to setting policies only for Municipal Advisor Representatives (MAs) and Municipal Advisor Principals as these are the types of professionals most common to non-dealer municipal advisory firms.

Professionals who serve in another capacity or MA Firms that employ such professionals, including Municipal Advisor Solicitors, Municipal Advisor Supervisory Chain Person and Municipal Advisor Executive Officer, should consult Rule G-37 to understand the obligations applicable to these types of professionals.

### **General Prohibitions Enacted in Rule G-37**

The Rule places new standards on MAs and others to eradicate pay-to-play practices in this sector. The Rule has applied to Broker/Dealers and Broker/Dealer MAs for many years, and as of August 17, will apply to Municipal Advisors. As NAMA has repeatedly stated, MAs should avoid situations where providing a contribution – directly or indirectly – could influence their ability to obtain business. *MA firms should develop policies and practices that address numerous situations related to direct and indirect political contribution practices, approval processes, and recordkeeping and reporting standards.*

A violation of Rule G-37 could lead to a 2 year ban on business with a client. Further understanding of violations and penalties should be made in conjunction with counsel.

Contributions not only include direct money donations, but also event tickets benefitting a candidate and in-kind contributions. *MA firms should develop a policy on how to determine the monetary value of in kind contributions, and the contribution amount of any event ticket. MAs and MA firms may also wish to consult MSRB Rule G-20, ban on gifts, to ensure that any donation or contribution would not violate that rulemaking even if it is permitted under Rule G-37.*

**A key trigger in Rule G-37 is whether or not the MA can VOTE for the person benefitting from the contribution made by him/her.** If the answer is yes, then in most cases the MA can contribute up to \$250 without violating the Rule and triggering a ban on business. If the answer is no, then in most cases the MA can not contribute any amount of money, yet if a contribution is made in these circumstances, it must be reported.

## **Specific Issues Snapshot**

Below is a summary of some of the components of the Rule. *The scenarios outlined below should be used as a starting point for the development of policies and procedures.* Again, it is recommended that you consult counsel in gaining a full understanding of the Rule and its implications for your practice.

### *Contributions to Candidates*

If the **MA CAN VOTE** for the candidate, then the MA can contribute (directly or indirectly) up to \$250 (per election for specific candidate) without violating Rule G-37 and triggering a ban on business. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not.*

If the **MA CAN NOT VOTE** for the candidate, then no contribution can be made without violating Rule G-37, and triggering a ban on business. Any contribution under this scenario must be reported to the MSRB. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not, and how to record and report a contribution that violates the Rule.*

### *Firm Run PAC*

A PAC established and run by an MA Firm should carefully consider how to abide by Rule G-37. *MA Firms running a PAC should ensure through policies and procedures that funds from the PAC do not exceed the \$250 amount where applicable, and in other situations contributions are avoided altogether. Policies and procedures should also have provisions for contributions to federal candidates.*

### *Contributions to Local and State Political Parties and non-Firm run PACs*

MA Firms must determine whether their contributions will be directed to specific issuer candidates. The following considerations apply if the political party or PAC will direct contributions to specific issuer candidates.

If the **MA CAN VOTE** for the candidate or candidate who would benefit from a contribution, then the MA can contribute up to \$250 (per year) without violating Rule G-37 and triggering a ban on business. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not.*

If the **MA CAN NOT VOTE** for the candidate, then no contribution can be made without violating Rule G-37, and triggering a ban on business. Any contribution under this scenario must be reported to the MSRB. *MA firms should develop policies and procedures for all types of possible contribution scenarios and for determining if a contribution is acceptable or not, and how to record and report a contribution that violates the Rule.*

Contributions to local and state political parties must generally be reported to the MSRB.

### *Federal Political Parties*

If there is interest in contributing to a federal/nationwide political party, the MA should inquire whether or not funds from that political party would benefit a specific candidate in their state and/or locality. *MA firms should develop policies and procedures that address possible scenarios when contributions to a nationwide PAC or political party are and are not permissible.*

### *Bond Ballot Initiatives*

Rule G-37 does not prohibit contributions to Bond Ballot campaigns. Any such contributions must be disclosed to the MSRB except contributions up to \$250 where the MA can vote. *MA firms should have policies and procedures in place for bond ballot initiatives, and be aware of additional local and state laws that may apply to these types of contributions.*

### *Inaugural Expenses*

Donations to Inaugural events follow the same rules as if the funds were going to a candidate, PAC or political party in the general election. *MA firms should have policies and procedures in place related to contributions to Inaugural events.*

### *Volunteer Activities*

MA's may volunteer for campaigns during non-work hours as long as those activities do not incur expenses and are not related to fundraising activities. *MA firms should develop policies and procedures specifying under what circumstances MA's may or may not volunteer for a campaign.*

### *Soliciting or Coordinating Contributions*

MA's may not solicit for or coordinate contributions to candidates, PACs or political parties benefitting a candidate that is a client or potential client. Such activity would violate Rule G-37. *MA firms should develop robust policies and procedures related to soliciting and coordinating contributions for candidates, PACs and political parties.*

### *Contributions to Federal Candidates*

Generally, there are no limitations on contributions or activities related to candidates for federal office. However, if the candidate currently serves in a local or state jurisdiction where the MA resides, then the \$250/election limit will apply on the same basis as it applies to other state and local officials. *MA firms should have policies for the conditions when contributions to federal candidates are and are not permissible.*

### *Contributions to Charitable Organizations*

There is no ban on making contributions or donations to charitable organizations under Rule G-37. However, other MSRB Rulemaking (Rules G-42 and G-20) may apply in this area. Furthermore, MA's should avoid situations where making charitable donations could be perceived as a quid pro quo for doing business. *MA firms should develop policies and procedures regarding when MA's may make charitable contributions, that reflects MSRB Rules G-37, G-42 and G-20.*

### **Quarterly Forms**

MA Firms must submit quarterly information electronically to the MSRB, beginning October 31, 2016, related to Rule G-37, and *MA's should ensure that they are set up in the MSRB Gateway system to submit that information well in advance of the due date.* In addition to listing contributions, Form 37 also calls on MA firms to include their client list each quarter. *MA's should determine how best to track and record contributions and client work to ensure submissions are correct.*

### **Supervisory Considerations**

Firms should develop robust supervisory procedures to ensure compliance with Rule G-37. Firms may wish to consider various ways to assist with these procedures including: maintaining a contributions log, surveying all employees covered by firm policy on a quarterly basis, using third party tools to see if employees covered by firm policy have made contributions (e.g., opensecrets.org), and key word email searches of covered employees. Documentation of this supervisory work is also essential.