

Political Law Alert

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MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations

Recently, the Municipal Securities Rulemaking Board (MSRB) noted in its quarterly compliance newsletter dated June 8, 2018 that it has “compliance concerns” regarding issuer-solicited charitable donations. The MSRB’s quarterly newsletter does not have the force of formal agency guidance, however, it does offer insight into how the MSRB may view issuer-solicited charitable donations.

Though charitable donations do not implicate the MSRB’s pay-to-play Rule G-37, the MSRB notes that the donations may have implications under other rules, as described below.

- **Rule G-17:** This rule requires dealers acting as underwriters in a negotiated underwriting to disclose actual or potential material conflicts of interest with respect to the issuance. The MSRB noted in its newsletter that it would be a violation of Rule G-17 for an underwriter to compensate any undisclosed third party in order to secure municipal securities business. Thus, if an underwriter makes a charitable donation for these purposes, the underwriter must disclose the donation to the issuer as a conflict of interest.
- **Rule G-42:** This rule generally prohibits municipal advisors from making payments for the purpose of obtaining or retaining an engagement. The MSRB noted that if a municipal advisor makes a charitable donation for these purposes, it would violate Rule G-42.
- **Rule G-20:** This rule prohibits, with some exceptions, any regulated entity or its associated persons from directly or indirectly giving any thing or service with value in excess of \$100 to a person if such payments or services are in relation to the municipal securities or municipal advisory activities of the recipient’s employer. The MSRB noted that, where a regulated entity makes a directed donation to a charity that is closely aligned with the third party requesting the donation, it may be deemed an indirect gift or gratuity under Rule G-20. Therefore, if that person is an official of an issuer and the donation is in excess of \$100, the regulated entity may be in violation of Rule G-20.

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Please note that the Financial Industry Regulatory Authority (FINRA, then known as the National Association of Securities Dealers), issued a similar cautionary notice to its members in 2006. However, FINRA expressed these concerns only to prevent a conflict of interest. The new MSRB guidance is notable in that it, for the first time, indicates that an issuer-solicited charitable donation also may be considered a gift under Rule G-20.

In light of this new guidance, it is more important than ever for municipal securities dealers and municipal advisors to have a robust company policy concerning charitable donations. For assistance in developing such a policy, please reach out to your usual Skadden contact.

The newsletter is available [here](#).

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