Bond Case Briefs

Municipal Finance Law Since 1971

MSRB Rule G-37: Balancing Market Integrity with First Amendment Rights

Last week, a federal appeals court decision forcefully and thoroughly reaffirmed the MSRB's pay-t--play rule, which was first upheld under the First Amendment a quarter century ago. The case involved a challenge to a pay-to-play rule adopted by the Financial Industry Regulatory Authority (FINRA) in 2016, but the case has important implications for the promotion of the integrity of the municipal securities market.

On June 18, 2019, the U.S. Court of Appeals for the D.C. Circuit rejected a First Amendment challenge to the U.S. Securities and Exchange Commission's (SEC) approval of FINRA Rule 2030. That rule, with some exceptions, limits the ability of broker-dealers and certain of their personnel to solicit municipal entities for business when they have made political contributions to relevant municipal officials. FINRA openly modeled the rule on the MSRB's Rule G-37, which the MSRB adopted in 1994, and FINRA supported the new rule's constitutionality according to the same rationale underlying Rule G-37.

Rule G-37, with some exceptions, imposes a two-year ban on business with a municipal entity when municipal securities dealers or municipal advisors, or certain of their personnel, make political contributions to relevant municipal officials. The rule excepts contributions of up to $250 by municipal finance professional to candidates for whom they are entitled to vote. The MSRB carefully crafted the rule to sever even the appearance of a connection between political contributions by municipal bond dealers and the award of municipal securities business. After the MSRB's jurisdiction was expanded by the Dodd-Frank Act in 2010 to regulate municipal advisors, the MSRB amended Rule G-37 to cover them as well.

When the MSRB adopted Rule G-37 in 1994, a market participant challenged it as an unconstitutional abridgment of political speech, in a case called *Blount v. SEC*. The same D.C. Circuit upheld Rule G-37, in a 1995 decision finding that the rule served an important interest in preventing the appearance of political corruption and was well tailored to serve that interest.

The recent challengers to the FINRA rule argued, as a major thrust of their case, that the controlling law of the Supreme Court had since changed. The MSRB filed an *amicus brief* in the case to help answer that charge. The D.C. Circuit agreed with the SEC's and MSRB's position, and made clear that the court's prior decision on Rule G-37 is just as sound today as it was in 1995.

Rule G-37 is widely regarded as having been a highly effective measure that has well promoted the integrity of the municipal securities market for some 25 years. Not only has FINRA modeled a rule on Rule G-37, but so have the SEC and Commodities Futures Trading Commission. Last week's important D.C. Circuit decision is a welcome vindication of the MSRB's approach to balancing the need to promote market integrity with vital First Amendment rights.

by Lynnette Kelly

President and CEO at Municipal Securities Rulemaking Board

Published on June 27, 2019

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com