ACEC
American Council of Engineering Companies
100 Years of Excellence

David A. Raymond
President & CEO

October 1, 2014

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: Draft Amendments to MSRB Rule G-37

Dear Mr. Smith:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America's engineering industry – I appreciate the opportunity to comment on the draft amendments to MSRB Rule G-37, which would regulate political contributions made by firms and individuals who are registered as municipal advisors under the Dodd-Frank financial services reform law.

ACEC members – numbering more than 5,000 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation's economy, and enhance and safeguard America's quality of life. Many of our member firms work with municipal clients and could potentially be affected by the municipal advisor rule.

ACEC strongly supports protections to ensure a fair and transparent municipal procurement process. At the same time, we have serious concerns about this regulatory effort, which would effectively deny American firms and the American citizens they employ the right to engage in the democratic process.

The draft amendments to MSRB Rule G-37 propose to place conditions on the political activity of municipal advisors that are similar to those in place for securities dealers. Under the draft amendments, registered municipal advisors that make political contributions to municipal officials who select such advisors would be prohibited from providing municipal advisory services to those municipalities for a two-year cooling-off period. There is a limited exception for *de minimis* contributions. The ban on municipal advisory business could be triggered by contributions to these municipal officials from the registered firm, municipal advisor professionals (MAPs) within the firm, or a political action committee (PAC) controlled by either the firm or an MAP. Under the rule, the term MAP applies to individuals who perform municipal advisory services, their

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supervisors, up through and including the chief executive officer, and members of the executive or management committee. The cooling-off period also could be triggered by the look-back provision in the draft rule, which applies to contributions made within two years prior to an individual's employment as an MAP, or to contributions made within six months prior to an individual's employment as a supervisor of MAPs or executive officer in the firm. Finally, indirect contributions, such as those made through a PAC not controlled by the MAP, and contributions that are solicited by the MAP could also trigger the cooling-off period.

We are particularly concerned that the MSRB is proposing to limit political engagement while the SEC is still in the process of clarifying the definition of municipal advisory services. The Dodd-Frank law specifically exempted "engineers providing engineering advice" from the municipal advisor rule, yet it is apparent that some services routinely requested by municipal clients could be covered. The engineering industry is working in good faith with the SEC to further refine the municipal advisor definition. Unfortunately, the draft amendments to MSRB Rule G-37 seek to place new sanctions within a regulatory framework that is still changing. We would respectfully urge the MSRB to reconsider this effort until the SEC has fully clarified the definition of municipal advisory services.

Beyond ACEC's fundamental concerns with the premise of the rule, it creates a potential conflict with other federal laws relative to its "look-back" provision. In general, the Department of Labor does not favorably view questions during the hiring process that are not directly related to the job itself. Employers would be reluctant to ask about political contributions due to the risk that the hiring process would be viewed as discriminatory, yet failing to do so could trigger the cooling-off period and make the firm ineligible to provide municipal advisory services. We would ask at a minimum that the MSRB address this apparent contradiction with existing employment law and inform registered firms how they can legally obtain information about political contributions without triggering sanctions elsewhere.

ACEC also believes that the draft amendments to Rule G-37 are not sufficiently clear regarding whether contributions to the PAC of a trade association, such as ACEC and its state member organizations, would constitute indirect contributions that could trigger the two-year ban. ACEC members choose to participate in ACEC/PAC and the PACs of our state member organizations in order to support the election of officials who understand the engineering industry. We are familiar with the discussion of indirect contributions in the interpretive notice on MSRB Rule G-37 that is located on the MSRB's website. However, we believe that additional guidance is needed as to what constitutes an indirect contribution to a trade association PAC so that our member firms and their employees can comply appropriately with the rule.

In addition, the rule would require extensive education of employees regarding the ramifications of personal political contributions on the firm's ability to provide municipal advisory services. It would be extremely challenging for large engineering firms that employ thousands of people to be aware of all individual donations. Small firms, in which engineers and other employees often take on multiple roles, may find compliance

difficult due to a lack of personnel resources. We believe the MSRB should consider these administrative costs as it continues to work on the draft amendments to Rule G-37.

As mentioned above, the draft amendments to Rule G-37 include a *de minimis* exclusion from the two-year ban. This provision states that the two-year ban will not be triggered by contributions made by an MAP to a candidate for municipal office for whom the MAP can vote, as long as the contributions do not exceed $250 per election. We note that the Rule G-37 FAQ document located on the MSRB's website has two different definitions of "election." Section II.6 states that "The *de minimis* exception is keyed to an election cycle…" However, Section II.8 states that the *de minimis* exception of $250 applies separately to primary and general elections. We request that the MSRB clarify whether "election" in this context refers to an election cycle, or whether there are separate $250 thresholds for primary and general elections.

We respectfully request that the MSRB consider the issues and questions we have raised. Thank you for your consideration of our comments, and we look forward to working with the MSRB on these issues as the rulemaking process moves forward.

Sincerely,

David A. Raymond
President & CEO