



Hon. David K. Levdansky  
Finance Committee Chairman  
127 Irvis Office Building  
PO Box 202039  
Harrisburg, PA 17120-2039

Hon. Steven R. Nickol  
Finance Committee Republican Chairman  
18 East Wing  
PO Box 202193  
Harrisburg, PA 17120-2193

Re: HB 2738

Dear Chairmen Levdansky and Nickol:

The Securities Industry and Financial Markets Association<sup>1</sup> appreciates the opportunity to comment on HB 2738, your proposal to restrict campaign contributions and investment relationships.

As you know, our member firms have been subject to a rule very similar to HB 2738 since 1994, notably Municipal Securities Rulemaking Board ("MSRB") Rule G-37. Rule G-37 prohibits a broker-dealer from engaging in municipal securities business (e.g., underwriting, or providing financial advisory services on, the primary offering of municipal securities) with an issuer for two years if the broker-dealer, its political action committee, or its employee who meets the definition of a "municipal finance professional" ("MFP") makes a political contribution to an official of that issuer (i.e., a candidate for, or incumbent of an elected office that has the authority to influence the selection of a broker-dealer for municipal securities business or appoint someone to such office). The Rule also prohibits the solicitation of such contributions. MFPs include, but are not limited to, employees who directly or indirectly communicate with a governmental issuer for the purpose of obtaining or retaining municipal securities business.

Rule G-37 also includes several exemptions, such as contributions made by an MFP to a candidate for whom he or she is entitled to vote and which do not exceed \$250 per election; an automatic exemption from Rule G-37's 2-year ban if the contribution is made by an MFP, does not exceed \$250, is discovered by the broker-dealer within four months and a refund of the contribution is obtained within sixty days of discovery; and a mechanism so that if a covered contribution is made, a broker-dealer may apply with the regulator (fka NASD, now FINRA) for a discretionary exemption from the 2-year ban and also appeal any exemption denial.

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

In light of the fact that you have a representative from MSRB scheduled to testify at the hearing, I will defer to that representative and will not go into any more detail or depth on the MSRB rules now regulating our industry, except to say that the rules have been regularly modernized and are vigorously enforced.

In assessing the bill it would be helpful to know if a gap has been identified between activity covered by Rule G-37 and activity of concern that has occurred in Pennsylvania. The specifics of this gap, including the type of activity raising concerns and the professionals engaging in such activity, would better inform an evaluation of this bill. Without knowing these particulars, I can offer some general observations on the bill as proposed:

Generally, the bill would ban a person (or any individual representing that person or their PAC) from making or soliciting campaign contributions to a candidate for State Treasurer during the two-year period prior to having an "investment relationship" with the state Treasury Department and through the completion of that relationship. The bill would also prohibit the state Treasury Department from entering into an investment relationship with a person that has made such prohibited contribution.. The State Ethics Commission would investigate any reported violations, and a finding of violation would result in a 2-year lockout from engaging in an investment relationship with the Treasury Department. A limited safe harbor for inadvertent, unintentional, or unknowing contributions self-reported within 90 days applies.

In an industry such as ours that expends significant resources to comply with the panoply of federal, state, and self-regulatory organization laws and rules, we certainly appreciate the overall effort to provide clarity within the proposal. There are a few areas where for compliance purposes more additional detail might be helpful, however.

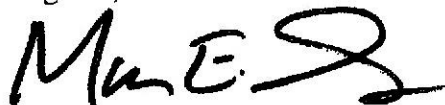
One question arises in Section 311 (a) (1) and (a)(2) [p.2, lines 11 and 19 in bill], which refer to "an individual representing the person." In particular, this does not specify as to before whom the individual must be representing the company in order to be covered under this ban. Without such clarification, this provision could be read expansively to cover all employees of a company given that all employees represent a company to some degree, even though it may have nothing to do with the Treasury Department. Thus, this provision should be modified to cover "an individual representing the person before the Treasury Department" to more accurately reflect the purpose of this statute.

The bill also has no exemption for a de minimis contribution. In particular, a law that regulates an area of political speech (such as political contributions) should weigh any dangers that political contributions may pose to the government contracting process against the legitimate interests that an individual may have in politically expressing himself or herself, completely unrelated to business. One way to strike such balance is to provide an exemption for a de minimis contribution. For example, one good benchmark is Rule G-37's exemption for a \$250 contribution made by an individual to a candidate for whom he or she is entitled to vote. A small contribution of \$250 would not influence a State Treasurer and the requirement that the individual be entitled to vote for the Treasurer ensures that the individual has an interest in the

candidate apart from business. Thus, we suggest that the same de minimis exemption be included in the bill.

We do appreciate that this proposal is being heard today, and also that it would not take effect until November 30, 2010, which enables us to have these discussions to make critical clarifications and also to provide our member firms with appropriate advance notice of any restrictions. Thank you for the opportunity to work with you and your staff on this proposal, and please do hesitate to contact me at (212) 313-1317 if you have any questions on the above comments.

Regards,

A handwritten signature in black ink, appearing to read "Marin E. Gibson". The signature is stylized with a large, cursive "M" and "G".

Marin E. Gibson  
Managing Director and Counsel  
State Government Affairs