

SEC Issues Risk Alert on Rule G-37; Provides Examples Useful to All

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On August 31, 2012, the Office of Compliance Inspections and Examinations (OCIE) of the Securities and Exchange Commission (SEC) issued a National Examination Risk Alert with respect to Municipal Securities Rulemaking Board (MSRB) Rule G-37. Although this Alert related to the federal pay-to-play law applicable to broker-dealers in the bond underwriting business, its advice and examples can be useful with respect to improving compliance with respect to any federal, state, or local pay-to-play law. The Alert can be found [here](#).

With respect to issues, the OCIE noted that persons regulated under Rule G-37 were failing in several areas. Among other things, some in the regulated community were failing to keep updated and accurate records, file accurate and complete quarterly reports and adequately supervise the employees subject to the pay-to-play prohibition. Together, these areas of oversight led regulated entities to be in violation of the Rule in that they did business with a state or local government within two years after a municipal finance professional (MFP) made contributions to a covered official of that jurisdiction.

As examples of compliance programs, the OCIE noted the variety of options in use. Most compliance programs centered on pre-clearance requirements, where employees must pre-clear potential contributions and fundraising activity with the employer before embarking on the activity, but varied in the types of persons covered—some programs only applied to MFPs, while others extended to non-MFPs. The most robust of the programs covered all employees and all contributions. Some programs examined by the SEC even went so far as to ban non-de minimis contributions by a subset of employees. In addition, many firms focused on robust training programs so that employees

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

were aware of their obligations under company policies and on robust due diligence programs with respect to possible new MFPs from inside and outside the firm.

Given the multiplication of federal, state and local pay-to-play laws over the past several years, entities of all types should take the Alert into account when facing the risks in their particular industry. The factors and examples outlined in the Alert provide bases for creating effective compliance programs. Wiley Rein LLP has assisted many clients across various business areas in creating and operating pre-clearance and other programs designed to reduce the political risks associated with employee and enterprise activity.