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Submitted Electronically via MSRB Portal to:

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board

Dear Mr. Smith,

Hartfield, Titus & Donnelly, LLC (“HTD” or the “Firm”) appreciates the opportunity to respond to MSRB Notice 2018-22, wherein comments were requested concerning draft interpretive guidance related to “pennying” and other existing guidance for best execution obligations; specifically, the practice of posting bid-wanted on multiple platforms to achieve compliance with best execution requirements. HTD is a Municipal Securities Broker’s Broker (MSBB) and, as such, believes that its central role in the municipal bid-wanted marketplace provides the Firm, and other MSBBs, with perspective that should be taken into consideration with the commentary of other market participants who are participating in the MSRB’s request for comments.

Pennying

“Pennying” is defined in Notice 2018-22 as when “the dealer, after reviewing bid information received [from an MSBB conducting a bid-wanted for the dealer], either matches the high bid received in response to the bid-wanted or purchases the bonds at a price that is nominally higher than the high bid.” The MSRB also included “last-look” as another name for “pennying”, however, HTD feels that this is in error being that “last look” is more commonly understood to mean when a MSBB suggests to a bid-wanted bidding participant to revise their bid based on information that is only known to the broker and the selling dealer. This practice is prohibited under MSRB Rule G-43.

As a general matter, HTD would not characterize “pennying” as a prevalent activity. Instances when the dealer that is submitting the bid-wanted is “in competition” with the bid-wanted¹ and is ultimately the high bid for the bonds are not unusual, but are not prevalent either. As the market participant conducting the bid-wanted, an MSBB is uniquely positioned to observe and manage instances where perceived abuses of the bid-wanted process may have occurred. This is not to say that MSBBs should assume a regulatory enforcement roll in this process, but rather, should continue to conduct and manage bid-wanted in a manner that is compliant with MSRB Rule G-43.

Additionally, to the extent that a dealer is using a MSBB to conduct a bid-wanted purely for price discovery, HTD suggests that the MSRB should reiterate its guidance from Rule G-43 which

¹ A practice where the selling dealer is also soliciting bids internally.

prohibits the use of MSBBs solely for price discovery purposes and provide any carve-out guidance where applicable if necessary.

Best Execution

HTD's observation as a MSBB is that there has been a significant increase in the number of bid-wanted that are posted with multiple MSBBs and platforms since the inception of MSRB Rule G-18 ("Best Execution"). It is apparent that there is a misunderstanding among market participants of what constitutes best-execution obligations under Rule G-18. This misunderstanding is causing participants to post what are essentially duplicate bid-wanted solely for the purpose of meeting a misunderstood compliance obligation. The unintended consequence of this misunderstanding is that these duplicate bid-wanted often do not trade (e.g. many bidders do not take these bid-wanted items seriously, or "bidder fatigue") and a false sense of market volume is created.

HTD feels that this can easily be addressed by the MSRB by providing clear guidance to the marketplace that in a bid-wanted auction, every bid is, in fact, a "market" for the purposes of MSRB Rule G-18 and that it is not necessary to put bid-wanted out with multiple MSBBs to satisfy compliance obligations under this rule.

In addition to what is provided herein, HTD is including as an attachment to this letter its responses to the questions provided in MSRB Notice 2018-22 to provide additional context to the Firm's responses concerning these topics.

Sincerely,



Edward J. Smith
Chief Compliance Officer
Hartfield, Titus & Donnelly, LLC



Christopher C. Ferreri
Chief Operating Officer
Hartfield, Titus & Donnelly, LLC

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Request for Comment

The MSRB seeks comment on draft interpretive guidance on pennyning. In considering the draft interpretive guidance, the MSRB invites commenters to consider the following questions. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views or assumptions or issues raised in this request for comment.

1. Is pennyning prevalent or uncommon in the municipal securities market?
 - a. As Municipal Securities Broker's Brokers, we wouldn't characterize the activity as prevalent. There are cases when the dealer submitting the bid wanted does bid the bonds and becomes high bid, but anecdotally, we don't think this is widespread.

2. Would bidding dealers bid more often or more aggressively if they were confident that widespread pennyning did not occur in the municipal market or if they were confident that pennyning would not occur in a bid-wanted?
 - a. We collect tens of thousands of Bids in our normal course of business. Many of these bids are received electronically from automated feeds. We have seen a large increase in the number of bids we receive, however we don't believe that the greater quantity produces materially better liquidity. Our brokers communicate with their customers on a regular basis, many time during the day seeking competitive bids for the Bid Wanted we receive. From our perspective, traders bid more aggressively for bonds that they see greater value in. We wouldn't interpret the activity we see as suffering from any pennyning influence.

3. Does the draft interpretive guidance raise any new questions or sufficiently answer the question of what is pennyning? Is more guidance necessary to answer this question? If so, what type of guidance would be valuable?
 - a. It is our view that this activity needs to be monitored by the particular venue and if there is a pattern of behavior which we believe would negatively impact the market, say an increase in the prevalence of pennyning, then we would address that issue with the firm directly. It is our job to operate fair and liquid markets and we have done so for more than 50 years. We would not make decisions to favor any particular customer at the expense of being fair to the broader market.

4. Does the draft interpretive guidance represent the appropriate approach to addressing pennyning in the municipal securities market?
 - a. In our view, yes. We welcome the guidance provided by the MSRB as it is perfectly aligned with our mission; to operate fair, liquid markets. The guidance provides us with a balance of regulatory support for our markets and the flexibility in our approach to evolve.

5. As an alternative to adopting the draft interpretive guidance, should the MSRB instead pursue rulemaking to prohibit pennyng? Why or why not? Are there other alternatives that may achieve the same or greater benefits sought by the MSRB at lower cost or burden?
 - a. It is our view that rulemaking will be less effective than regulatory guidance. We would anticipate much discussion around a clear definition of pennyng which in turn would provide opportunities for participants to find workarounds to specific definitions. Guidance enables market operators to deal with this issue from both a business view and regulatory view.

6. If the dealer bids in competition (the dealer submits a bid as part of the bid-wanted process) and on a blind basis (without knowledge of the other bid prices), should any guidance or rule make clear that pennyng has not occurred in those situations, even if the dealer's best such bid is the same as or only modestly better than the next best bid?
 - a. If a dealer were to submit a bid for the same issues that they are posting a bid wanted for, clearly there could be no assumption of pennyng. This would certainly alleviate any concern, however there are likely many instances where the timing of the bid wanted submission and the submitting dealer's interest in bidding are not simultaneous. Demanding this from the submitting dealer would likely limit better pricing.

7. What are the pros and cons of a dealer using a bid-wanted as opposed to a bid-wanted in competition? Why would a dealer with interest in a bond not distribute a bid-wanted in competition as opposed to distributing a bid-wanted and then purchasing the bond for its account following the end of the bid-collection period?
 - a. There is a wide variety of technical capabilities among the dealer community. Some are highly automated and distribute thousands of bids and bid wanteds on a daily basis. Requiring that the submitting dealer could only bid upon the submission of the bid wanted would likely limit bidding activity. Many, many firms are not fully automated and the process simply is more time-consuming and manual. Again, forcing a dealer to only submit bid wanteds in competition would likely limit their activity.

8. The draft interpretive guidance provides that, depending on the facts and circumstances, the use of bid-wanted (whether distributed via an ATS or broker's broker) solely for price discovery purposes would be an unfair practice within the meaning of Rule G-17, and that the repeated practice of pennyng would be indicative of having the sole purpose of price discovery.
 - a. Is it appropriate to apply an intent-based standard to determine whether pennyng has occurred?
 - i. We think this would be difficult to manage and an imperfect measure of actual intent. In addition, placing the monitoring and enforcement of this standard on

- the market operator, be it a Broker's Broker or ATS may be harmful to the competitive nature of the various market operators.
- b. Is it more appropriate to pursue a bright-line standard?
 - i. In our view, guidance on this issue is preferred to bright-line standards which over time may be subject to change or workarounds.
 - c. Are there instances in which the use of a bid-wanted solely for price discovery should not be deemed an unfair practice within the meaning of Rule G-17?
 - i. We don't believe bid wanteds should be used solely for price discovery.
9. Should the MSRB define what volume or frequency of pennyng would constitute a "repeated practice"? Is guidance necessary on whether a dealer has engaged in a "repeated practice" of pennyng?
 - a. It is our view that the market operators should monitor the bid wanted process and determine if a particular dealer's activity is detrimental to the operation of the market.
10. Given that Rule G-18, on best execution, is an order-handling rule designed to encourage competition, if widespread pennyng discourages dealers from bidding or bidding aggressively, should the MSRB interpret a repeated practice of pennyng as impairing a dealer's ability to meet its best-execution obligations? For example, if a dealer's policies and procedures permit it to engage in a repeated practice of pennyng, should those policies and procedures be viewed as inconsistent with the dealer's best-execution obligations?
 - a. I think we leave this alone as it's a dealer question.
11. Is the process for retail bid-wanted significantly different than the process for institutional bid-wanted (e.g., longer firm times—the length of time for which the bidder must honor the bid provided, use of bid-wanted versus bid-wanted in competition, use of last looks)? Is it significantly different even for similar-size positions? If so, are there reasonable grounds for the difference in process or should they be more alike?
 - a. I would pass on this as well as our business is not retail.
12. Should there be a "safe harbor" under the Rule G-17 interpretation for internalization with a substantial price improvement over the best bid in a bid-wanted? If so, is there an amount that should presumptively be deemed "substantial" price improvement?
 - a. It is our view that the market operators monitor for this behavior based on regulatory guidance rather than firm amounts.

Request for Comment

The MSRB seeks comment on the draft amendments to the implementation guidance on best execution. In considering the draft amendments, the MSRB invites commenters to consider the following questions. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views or assumptions or issues raised in this request for comment.

1. Is the practice of posting the same bid-wanted simultaneously on multiple trading platforms prevalent in the municipal securities market?
 - a. We believe it is.

2. Does the posting of the same bid-wanted simultaneously on multiple trading platforms provide dealers with greater access to liquidity?
 - a. To the contrary, we believe that it generates a false view of liquidity.

3. Are there reasons for a dealer to post the same bid-wanted simultaneously on multiple trading platforms other than for the purpose of complying with Rule G-18?
 - a. It is our view that posting to an ATS or a Broker's Broker is posting to multiple participants and should constitute adequate distribution to comply with Rule G-18.

4. Does the posting of the same bid-wanted simultaneously on multiple trading platforms impact dealers' willingness to respond to bid-wanted, and do dealers alter their bidding strategies when responding to bid-wanted that are posted simultaneously on multiple trading platforms?
 - a. We do have anecdotal evidence that this process frustrates dealers' willingness to respond.

5. Does the practice of posting the same bid-wanted simultaneously on multiple trading platforms otherwise have an effect on market liquidity? If the foregoing effects are observed, should the MSRB take any action, such as engaging in rulemaking, to prevent any perceived or observed market harms?
 - a. It is our view that the MSRB's recent guidance on posting to an ATS or Broker's Broker provides adequate distribution. We don't think any further action is required.

6. Does the practice of posting simultaneously on multiple trading platforms occur on the offering side of the market? If so, please comment on its prevalence and impact in response to the above questions as it relates to that side of the market.

- a. We believe that it does, and is being done to satisfy an incorrect interpretation of the Best Execution.
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- 7. Would the draft amendments, if adopted, create direct, indirect or inadvertent costs or burdens? Is there data or other evidence, including studies or research, that support commenters' cost or burden estimates?
 - a. As market operators we feel it would create a burden on us and unnecessarily increase our regulatory costs.