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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 04

Amendment No. (req. for Amendments *)

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * [X] Amendment * [ ] Withdrawal [ ]

Section 19(b)(2) * [X] Section 19(b)(3)(A) * [ ] Section 19(b)(3)(B) * [ ]

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Pilot [ ] Extension of Time Period for Commission Action * [ ] Date Expires *

Exhibit 2 Sent As Paper Document [X]

Exhibit 3 Sent As Paper Document [ ]

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposed Rule G-43, on Broker's Brokers; Proposed Amendments to Rules G-8, G-9, and G-18; and a Proposed Interpretive Notice on the Duties of Brokers, Dealers and Municipal Securities Dealers that Use the Services of Broker's Brokers

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Margaret Last Name * Henry
Title * General Counsel, Market Regulation
E-mail * phenry@msrb.org
Telephone * (703) 797-6600 Fax (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 03/05/2012

By Ronald W. Smith Corporate Secretary

(Name *) (Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required) Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change (required) Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☒	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change consisting of (i) proposed MSRB Rule G-43 governing the municipal securities activities of broker's brokers and certain alternative trading systems ("Proposed Rule G-43"), (ii) proposed amendments to MSRB Rule G-8 (on recordkeeping by broker's brokers and certain alternative trading systems), MSRB Rule G-9 (on record retention), and MSRB Rule G-18 (on agency trades and trades by broker's brokers) (collectively, the "Proposed Amendments"); and (iii) a proposed interpretive notice on the duties of brokers, dealers, and municipal securities dealers ("dealers") that use the services of broker's brokers (the "Proposed Notice"). The MSRB requests that the proposed rule change be made effective six months after approval by the Commission.

The text of the proposed rule change is set forth below:[1]

* * *

Rule G-43: Broker's Brokers

(a) *Duty of Broker's Broker*.

(i) Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

(ii) A broker's broker that undertakes to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities must not take any action that works against that dealer's interest to receive advantageous pricing.

(iii) A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted for municipal securities, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted.

(b) *Conduct of Bid-Wanteds*. A broker's broker will satisfy its obligation under subsection (a)(i) of this rule with respect to a bid-wanted if it conducts that bid-wanted as follows:

(i) Unless otherwise directed by the seller, a broker's broker must make a reasonable effort to disseminate a bid-wanted widely (including, but not limited to, the

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[1] Underlining indicates additions; brackets indicate deletions.

underwriter of the issue and prior known bidders on the issue) to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

(ii) If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker must make a reasonable effort to reach dealers with specific knowledge of the issue or known interest in securities of the type being offered.

(iii) Notwithstanding subsection (a)(ii) of this rule, each bid-wanted must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may be either (A) a precise (or "sharp") deadline or (B) an "around time" deadline that ends upon the earliest of: (1) the time the seller directs the broker's broker to sell the securities to the current high bidder, (2) the time the seller informs the broker's broker that the bonds will not be sold in that bid-wanted, or (3) the end of the trading day as publicly posted by the broker's broker prior to the bid-wanted.

(iv) If the high bid received in a bid-wanted is above or below the predetermined parameters of the broker's broker and the broker's broker believes that the bid may have been submitted in error, the broker's broker may contact the bidder prior to the deadline for bids to determine whether its bid was submitted in error, without having to obtain the consent of the seller. If the high bid is within the predetermined parameters but the broker's broker believes that the bid may have been submitted in error, the broker's broker must receive the oral or written permission of the seller before it may contact the bidder to determine whether its bid was submitted in error.

(v) If the high bid received in a bid-wanted is below the predetermined parameters of the broker's broker, the broker's broker must disclose that fact to the seller, in which case the broker's broker may still effect the trade, if the seller acknowledges such disclosure either orally or in writing.

(c) *Policies and Procedures.*

(i) A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings for municipal securities, which at a minimum:

(A) require the broker's broker to disclose the nature of its undertaking for the seller and bidders in bid-wanteds and offerings;

(B) require the broker's broker to disclose the manner in which the broker's broker will conduct bid-wanteds and offerings;

(C) require the broker's broker to be compensated on the basis of commissions or other economically similar basis and to provide the seller and bidders with a copy of its commission or other economically similar schedules for

transactions, with such schedules reflecting at a minimum the maximum charge that the broker's broker could impose on a given transaction;

(D) if the winning high bidder's bid or the cover bid in a bid-wanted has been changed, require the broker's broker to disclose the change to the seller prior to execution and provide the seller with the original and changed bids;

(E) if a broker's broker allows customers (as defined in Rule D-9) or affiliates (as defined in Rule G-11(a)(x)) to place bids, require the disclosure of that fact to both sellers and bidders in writing and require disclosure to the seller if the high bid in a bid-wanted or offering is from a customer or an affiliate of the broker's broker; provided, however, that the broker's broker is not required to disclose the name of the customer or affiliate;

(F) if the broker's broker wishes to conduct a bid-wanted in accordance with section (b) of this rule, require the broker's broker to adopt predetermined parameters for such bid-wanted, disclose such predetermined parameters prominently on its website in advance of the bid-wanted in which they are used, and periodically test such predetermined parameters to determine whether they have identified most bids that did not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the predetermined parameters were applied;

(G) describe in detail the manner in which it will satisfy its obligation under subsection (a)(i) of this rule in the case of offerings and bid-wanteds not conducted in accordance with section (b) of this rule;

(H) prohibit the broker's broker from maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;

(I) prohibit self-dealing by the broker's broker;

(J) prohibit a broker's broker from encouraging bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering;

(K) prohibit a broker's broker from giving preferential information to bidders in bid-wanteds, including but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out";

(L) prohibit a broker's broker from changing a bid price or offer price without the bidder's or seller's respective permission;

(M) prohibit a broker's broker from failing to inform the seller of the highest bid in a bid-wanted or offering;

(N) prohibit a broker's broker from accepting a changed bid or a new bid in the same bid-wanted after the broker's broker has selectively informed a bidder whether its bid is the high bid ("being used") in the bid-wanted; and

(O) subject to the provisions of sections (b), if applicable, and paragraph (c)(i)(N) of this rule, prohibit the broker's broker from providing any person other than the seller (which may receive all bid prices) and the winning bidder (which may only receive notice that its bid is the winning bid) with information about bid prices, until the bid-wanted has been completed, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public.

(ii) The broker's broker must disclose the policies and procedures adopted pursuant to subsection (c)(i) of this rule to sellers of, and bidders for, municipal securities in writing at least annually and post such policies and procedures in a prominent position on its website.

(d) *Definitions*.

(i) "Bidder" means a potential buyer in a bid-wanted or offering.

(ii) "Bid-wanted" means an auction for the sale of municipal securities in which:

(A) the seller does not specify a minimum or desired price for the securities that are the subject of the auction at the commencement of the auction;

(B) the identities of the bidders and the seller are not disclosed prior to the conclusion of the auction, other than to the broker's broker;

(C) bidders must submit bids for the auctioned securities to the broker's broker; and

(D) the seller decides whether to accept the winning bid.

(iii) "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

An alternative trading system, registered as such with the Commission, is not a broker's broker for purposes of this rule if, with respect to its municipal securities activities:

(A) it utilizes only automated and electronic means to communicate with bidders and sellers in a systematic and non-discretionary fashion (with the exception of communications that are solely clerical or ministerial in nature and communications that occur after a trade has been executed);

(B) all of the customers (as defined in Rule D-9) of the alternative trading system, if any, are sophisticated municipal market professionals; and

(C) the alternative trading system adopts, and complies with, policies and procedures that, at a minimum,

(1) require the alternative trading system to disclose the nature of its undertaking for the seller and bidders in bid-wanteds and offerings;

(2) require the alternative trading system to disclose the manner in which it will conduct bid-wanteds and offerings; and

(3) prohibit the alternative trading system from engaging in the conduct described in paragraphs (H)-(O) of subsection (c)(i) of this rule.

(iv) For purposes of paragraph (c)(i)(O) of this rule, a bid-wanted for a municipal security will be considered "completed" when either of the following occurs: (A) the security is traded, whether through the broker's broker or otherwise or (B) the broker's broker is notified by the seller that the security will not trade;

(v) "Cover bid" means the next best bid after the winning bid.

(vi) "Dealer" means broker, dealer, or municipal securities dealer.

(vii) For purposes of this rule, "offering" means a process for the sale of municipal securities in which:

(A) the seller specifies a minimum or desired price for the securities as part of the offering, at the offering's commencement;

(B) the identities of the seller and the bidders are not disclosed prior to the conclusion of the offering; and

(C) a broker's broker negotiates between the seller and the bidders to arrive at a price acceptable to the parties.

(viii) "Predetermined parameters" means formulaic parameters based on objective pricing criteria that are: (A) reasonably designed to identify most bids that may not represent the fair market value of municipal securities that are the subject of bid-wanteds to which they are applied, (B) determined by the broker's broker in advance of

the acceptance of bids in such bid-wanteds, and (C) systematically applied to all bids in such bid-wanteds. Predetermined parameters may not be based on bids submitted in the bid-wanted to which they are applied (*e.g*., cover bids). A broker's broker may establish different predetermined parameters for different types of municipal securities.

(ix) For purposes of this rule, "seller" means the selling dealer, or potentially selling dealer, in a bid-wanted or offering and does not include the customer of a selling dealer.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xxiv) No change.

(xxv) Broker's Brokers. A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain the following records with respect to its municipal securities activities:

(A) all bids to purchase municipal securities, together with the time of receipt;

(B) all offers to sell municipal securities, together with the time the broker's broker first receives the offering and the time the offering is updated for display or distribution;

(C) the time that the high bid is provided to the seller; the time that the seller notifies the broker's broker that it will sell the securities at the high bid; and the time of execution of the trade;

(D) for each communication with a seller or bidder pursuant to Rule G-43(b)(iv), the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller if applicable, who provided that direction;

(E) for each communication with a seller pursuant to Rule G-43(b)(v), the date and time of the communication; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the

communication; and the full name of the person at the seller who provided that direction;

(F) for all changed bids, the full name of the person at the bidder that authorized the change and the full name of the person at the broker's broker at whose direction the change was made;

(G) for all changes in offering prices, the full name of the person at the seller that authorized the change and the full name of the person at the broker's broker at whose direction the change was made;

(H) a copy of any writings by which the seller and bidders agreed that the broker's broker represents either the bidders or both seller and bidders, rather than the seller alone, which writings shall include the dates and times such writings were executed; and the full names of the signatories to such writings;

(I) a copy of the policies and procedures required by Rule G-43(c);

(J) a copy of its predetermined parameters (as defined in Rule G-43(d)(viii)), its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Rule G-43(c)(i)(F); and

(K) if a broker's broker trading system is a separately operated and supervised division or unit of a broker, dealer or municipal securities dealer, there must be separately maintained in or separately extractable from such division's or unit's own facilities or the facilities of the broker, dealer or municipal securities dealer, all of the records relating to the activities of the broker's broker or alternative trading system, and such records shall be so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Board.

(xxvi) Alternative Trading Systems. An alternative trading system registered as such with the Commission shall maintain the following records with respect to its municipal securities activities:

(A) for all changed bids, the full name of the person at the bidder firm that authorized the change and the full name of the person at the alternative trading system at whose direction the change was made;

(B) for all changes in offering prices, the full name of the person at the seller firm that authorized the change and the full name of the person at the alternative trading system at whose direction the change was made;

(C) a copy of the policies and procedures required by Rule G-43(d)(iii)(C); and

(D) if the alternative trading system is a separately operated and supervised division or unit of a broker, dealer or municipal securities dealer, there must be separately maintained in or separately extractable from such division's or unit's own facilities or the facilities of the broker, dealer or municipal securities dealer, all of the records relating to the municipal securities activities of the alternative trading system, and such records shall be so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Board.

(b) - (e) No change.

(f) *Compliance with Rule 17a-3*. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; subsection paragraph (a)(viii); and subsections paragraphs (a)(xi) through (a) [(xxiv)] (xxvi) shall in any event be maintained.

(g) No change.

* * * * *

Rule G-9: Preservation of Records

(a) *Records to be Preserved for Six Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) - (ix) No change.

(x) the records required to be maintained pursuant to rule G-8(a)(xviii); [and]

(xi) the records concerning secondary market trading account transactions described in rule G-8(a)(xxiv), provided, however, that such records need not be preserved for a secondary market trading account which is not successful in purchasing municipal securities[.];

(xii) the records required to be maintained pursuant to rule G-8(a)(xxv); and

(xiii) the records required to be maintained pursuant to rule G-8(a)(xxvi).

(b) - (g) No change.

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Rule G-18: Execution of Transactions

Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. [A broker, dealer or municipal securities dealer acting as a "broker's broker" shall be under the same obligation with respect to the execution of a transaction in municipal securities for or on behalf of a broker, dealer, or municipal securities dealer.]

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MSRB Notice 2012-__
Notice to Dealers That Use the Services of Broker's Brokers

Introduction

In view of the important role that broker's brokers play in the provision of secondary market liquidity for municipal securities owned by retail investors, MSRB Rule G-43 sets forth particular rules to which broker's brokers are subject. Rule G-43(a)(i) provides:

> Each dealer acting as a "broker's broker"[1] with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.[2]

In guidance on broker's brokers issued in 2004,[3] the MSRB noted the role of some broker's brokers in large intra-day price differentials of infrequently traded municipal securities with credits that were relatively unknown to most market participants, especially in the case of "retail" size blocks of $5,000 to $100,000. In certain cases, differences between the prices received by the selling customers as a result of a broker's broker bid-wanted and the prices paid by the ultimate purchasing customers on the same day were 10% or more. After the securities were purchased from the broker's broker, they were sold to other dealers in a series of transactions until they eventually were purchased by other customers. The abnormally large intra-day price differentials were attributed in major part to the price increases found in the inter-dealer market occurring after the broker's brokers' trades.

Rule G-43 addresses the role of broker's brokers, including their role in such a series of transactions. It is the role of the broker's broker to conduct a

properly run bid-wanted or offering and thereby satisfy its duty to make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The MSRB believes that a bid-wanted or offering conducted in the manner provided in Rule G-43 will be an important element in the establishment of a fair and reasonable price for municipal securities in the secondary market. This notice addresses the roles of other transaction participants, specifically the brokers, dealers, and municipal securities dealers ("dealers") that sell, and bid for, municipal securities in bid-wanteds and offerings conducted by broker's brokers. Those selling dealers ("sellers") and bidding dealers ("bidders") also have pricing duties under MSRB rules and their failure to satisfy those duties could negate the reasonable efforts of a broker's broker to achieve fair pricing.

Duties of Bidders

Rule G-13(b)(i) provides that, in general, "no broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation represents a bona fide bid[4] for, or offer of, municipal securities by such broker, dealer or municipal securities dealer." Rule G-13(b)(ii) provides that "[n]o broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the price stated in the quotation is based on the best judgment of such broker, dealer or municipal securities dealer of the fair market value of the securities which are the subject of the quotation at the time the quotation is made."

Dealers that submit bids to broker's brokers that they believe are below the fair market value of the securities or that submit "throw-away" bids to broker's brokers do so in violation of Rule G-13. While bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices. Throw-away bids, by definition, violate Rule G-13, because throw-away bids are arrived at without an analysis by the bidder of the fair market value of the municipal security that is the subject of the bid. A conclusion by the bidder that a security must be worth "at least that much," without any knowledge of the security or comparable securities and without any effort to analyze the security's value is not based on the best judgment of such bidder of the fair market value of the securities within the meaning of Rule G-13(b)(ii). When the MSRB first proposed Rule G-13, it explained in a February 24, 1977 letter from Frieda Wallison, Executive Director and General Counsel, MSRB, to Lee Pickard, Director, Division of Market Regulation, Securities and Exchange Commission that, among the activities that Rule G-13 was designed to prevent was the placing of a bid that is "pulled out of the air," which is another way to describe a throw-away bid.

Furthermore, when a dealer's bid is accepted and a transaction in the securities is executed, that transaction price (and accordingly the bid itself) will be

disseminated within the meaning of Rule G-13(a)(i) on the MSRB's Electronic Municipal Market Access (EMMA®) platform within 15 minutes after the time of trade. At that point, if the bid is off-market, it will create a misperception in the municipal marketplace of the true fair market value of the security. The fact that the bid price that wins a bid-wanted or offering may well not represent the true fair market value of the security is evidenced by the trade activity observed by enforcement agencies following such auctions. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices.

Duties of Sellers

Dealers that use the services of broker's brokers to sell municipal securities for their customers also have significant fair pricing duties under Rule G-30 when they act as a principal. As the MSRB noted in its request for comment on Draft Rule G-43,[5]

> the information about the value of municipal securities provided to a selling dealer by a broker's broker is only one factor that the dealer must take into account in determining a fair and reasonable price for its customer. In fact, in 2004, the National Association of Securities Dealers ("NASD") announced that it had fined eight dealers for relying solely on prices obtained in bid-wanteds conducted by broker's brokers, which the NASD found to be significantly below fair market value.[6] In that same year, the MSRB said that "particularly when the market value of an issue is not known, a dealer . . . may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations . . . ."

Under those circumstances where broker's brokers seeks to satisfy their fair pricing obligations in bid-wanteds conducted pursuant to Rule G-43(b), Rule G-43(b)(v) provides for notice by broker's brokers to sellers when bids in bid-wanteds are below predetermined parameters that are designed to identify possible off-market bids (*e.g.*, those based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids received by broker's brokers in prior bid-wanteds or offerings). Once a seller has received such notice, it must direct the broker's broker as to whether to execute the trade at that price. That notice by the broker's broker and required action on the part of the seller should put the seller on notice that it must take additional steps to ascertain whether the high bid provided to it by the broker's broker is, in fact, a fair and

reasonable price for the securities. Rule G-30 mandates that the seller, if acting as a principal, must not buy municipal securities from its customer at a price that is not fair and reasonable (taking any mark-down into account), taking into consideration all relevant factors, including those listed in the rule.

The MSRB notes that Rule G-8(a)(xxv)(E) requires broker's brokers to keep records when they have provided the seller with the notice described in Rule G-43(b)(v). Among the required records are the full name of the person at the seller who received the notice, the direction given by the seller firm following the notice, and the full name of the person at the seller who provided that direction.

Rule G-43(b)(i) permits a broker's broker to limit the audience for a bid-wanted at the selling dealer's direction, a practice sometimes referred to as "screening" or "filtering," because the MSRB recognizes that there may be legitimate reasons for this practice. However, the MSRB notes that such screening may reduce the likelihood that the high bid represents a fair and reasonable price. Selling dealers should, therefore, be able to demonstrate a reason that is not anti-competitive (*e.g*., credit, legal, or regulatory concerns), rather than trying to eliminate access by a competitor, for directing broker's brokers to screen certain bidders from the receipt of bid-wanteds or offerings. For example, a selling dealer might maintain a list of the firms it would be unwilling to accept as a counterparty and the reasons why.

The MSRB recognizes that there may be circumstances under which customers may need to liquidate their municipal securities quickly and that there are limitations on the ability of a bid-wanted or offering to achieve a price that is comparable to recent trade prices under certain circumstances, particularly in view of its timing and the presence or absence of regular buyers in the marketplace. Nevertheless, the MSRB urges sellers not to assume that their customers need to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate the securities.

Rule G-17 requires dealers, in the conduct of their municipal securities activities, to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practice. Broker's brokers have informed the MSRB that many dealers place bid-wanteds and offerings with broker's brokers with no intention of selling the securities through the broker's brokers. Some have noted that shortly thereafter they see the same securities purchased by dealers for their own accounts at prices that exceed the high bid obtained by the broker's brokers by only a very small amount. Other dealers have told the MSRB that they are skeptical of many of the bid-wanteds they see, because they think the bid-wanteds are only being used for price discovery by the selling dealers and are not real. Accordingly, in many cases, they do not bid. This use of broker's brokers solely for price discovery purposes harms the bid-wanted and offering process by

reducing bidders, thereby reducing the likelihood that the high bid in a bid-wanted will represent the fair market value of the securities. Additionally, it causes broker's brokers to work without reasonable expectation of compensation. For those reasons, depending upon the facts and circumstances, the use of bid-wanteds solely for price discovery purposes may be an unfair practice within the meaning of Rule G-17.

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[1] Rule G-43(d)(iii) defines a "broker's broker" as "a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker." Certain alternative trading systems are excepted from the definition of "broker's broker."

[2] A bid-wanted conducted in accordance with Rule G-43(b) will satisfy the pricing obligation of a broker's broker.

[3] MSRB Notice 2004-3 (January 26, 2004).

[4] Rule G-13(b)(iii) provides that:

> a quotation shall be deemed to represent a "bona fide bid for, or offer of, municipal securities" if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.

[5] MSRB Notice 2011-18 (February 24, 2011).

[6] *See* http://www.finra.org/Newsroom/NewsReleases/2004/P011465.

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(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its January 25-27, 2012 meeting. Questions concerning this filing may be directed to Peg Henry, General Counsel, Market Regulation at 703-797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The MSRB decided to consider additional rulemaking concerning broker's brokers and the dealers that use their services due to the important role that broker's brokers play in the provision of secondary market liquidity for retail investors in municipal securities. In 2004,[2] the MSRB issued a notice that, among other things, addressed the role of broker's brokers in large intra-day price differentials in the sale of retail size blocks of securities.

> **"Transaction Chains"**
>
> A frequent scenario in large intra-day price differentials occurs when a single block of securities moves through a "chain" of transactions during the day. The securities involved in these scenarios often are infrequently traded issues with credits that are relatively unknown to most market participants. In a typical case, the transaction chain starts with a dealer buying securities from a customer, usually in a "retail" size block of $5,000 to $100,000. The securities are then sold through a broker's broker. Two or more inter-dealer transactions follow, with a final sale of the securities being made by a dealer to a customer. In certain cases, the difference between the price received by the selling customer and the price received by the purchasing customer is abnormally large, exceeding 10% or more. In reviewing such transaction chains, it often appears that the two dealers effecting trades with customers at each end of the chain - one dealer purchasing from a customer and the other selling to a customer - did not make excessive profits on their trades. Instead, the abnormally large intra-day price differentials can be attributed in major part to the price increases found in the inter-dealer trading occurring after the broker's broker's trade.

The MSRB deferred its rulemaking on the subject of broker's brokers until the completion of Commission and Financial Industry Regulatory Authority ("FINRA") enforcement actions, which subsequently highlighted broker's broker activities that constitute clear violations of MSRB rules.[3]

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[2] MSRB Notice 2004-3 (January 26, 2004).

[3] *FINRA v. Associated Bond Brokers, Inc.* Letter of Acceptance, Waiver and Consent No. E052004018001 (November 19, 2007) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers); *FINRA v. Butler Muni, LLC* Letter of Acceptance, Waiver and Consent No. 2006007537201 (May 28, 2010) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to failure to inform the seller of higher bids submitted by the highest bidders); *D. M. Keck & Company, Inc. d/b/a Discount Munibrokers, et al.*, Exchange Act Release No. 56543 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder; also settlement in connection with alleged violation of Rules G-14 and G-

The MSRB recognizes that some broker's brokers make considerable efforts to comply with MSRB rules. However, given the nature of the rule violations brought to light by Commission and FINRA enforcement actions and the important role of broker's brokers in the provision of secondary market liquidity for retail investors, the MSRB determined that additional guidance and/or rulemaking concerning the activities of broker's brokers was warranted.

SUMMARY OF PROPOSED RULE G-43

The role of the broker's broker is that of intermediary between selling dealers and bidding dealers. Proposed Rule G-43(a) would set forth the basic duties of a broker's broker to such dealers.[4] Proposed Rule G-43(a)(i) would incorporate the same basic duty currently found in Rule G-18. That is, a broker's broker would be required to make a reasonable effort to obtain a price for the dealer that was fair and reasonable in relation to prevailing market conditions. The broker's broker would be required to employ the same care and diligence in doing so as if the transaction were being done for its own account.

Proposed Rule G-43(a)(ii) would provide that a broker's broker that undertook to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities could not take any action that would work against that dealer's interest to receive advantageous pricing. Under Proposed Rule G-43(a)(iii), a broker's broker would be presumed to act for or on behalf of the seller[5] in a bid-wanted,

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17 by broker's broker due to payment to seller of more than highest bid on some trades in return for a price lower than the highest bid on other trades, in each case reporting the fictitious trade prices to the MSRB's Real-Time Trade Reporting System); *Regional Brokers, Inc. et al.*, Exchange Act Release No. 56542 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder; broker's broker allegedly violated Rule G-17 by accepting bids after bid deadline); *SEC v. Wolfe & Hurst Bond Brokers, Inc. et al.*, Exchange Act Release No. 59913 (May 13, 2009) (settlement in connection with alleged violation of Rule G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder and for lowering of the highest bids to prices closer to the cover bids without informing either bidders or sellers). These cases also involved violations of Rules G-8, G-9, and G-28.

4 The duties of a broker's broker to any customers (as defined in Rule D-9) it may have are addressed under Rule G-18 (in the case of agency transactions) and Rule G-30 (in the case of principal transactions).

5 Under Proposed Rule G-43(d)(ix), "seller" would mean the selling dealer, or potentially selling dealer, in a bid-wanted or offering and would not include the customer of a selling dealer.

unless both the seller and bidders agreed otherwise in writing in advance of the bid-wanted.

Proposed Rule G-43(b) would create a safe harbor. The safe harbor would provide that a broker's broker that conducted bid-wanteds in the manner described in Proposed Rule G-43(b) would satisfy its pricing duty under Proposed Rule G-43(a)(i).[6] The provisions of the safe harbor are designed to increase the likelihood that the highest bid in the bid-wanted is fair and reasonable.

Proposed Rule G-43(b)(i) and (ii) would require a broker's broker to disseminate a bid-wanted widely and, in the case of securities of limited interest, to make a reasonable effort to reach dealers with specific knowledge of the issue or known interest in comparable securities.

Proposed Rule G-43(b)(iii) would require that each bid-wanted have a deadline for the acceptance of bids to assist in measuring compliance with the safe harbor.

Proposed Rule G-43(c)(i)(F) would require broker's brokers that availed themselves of the safe harbor to use predetermined parameters designed to identify possible off-market bids in the conduct of bid-wanteds. For example, the predetermined parameters could be based on yield curves, pricing services, recent trades reported to the MSRB's Real-Time Trade Reporting System (RTRS), or bids submitted to a broker's broker in previous bid-wanteds or offerings. Broker's brokers would be required to test the predetermined parameters periodically to see whether they were achieving their designed purpose.

Proposed Rule G-43(b)(iv) would permit a broker's broker that availed itself of the safe harbor to contact the high bidder in a bid-wanted about its bid price prior to the deadline for bids without the seller's consent, if the bid was outside of the predetermined parameters described above and the broker's broker believed that the bid might have been submitted in error. If the high bid was within the predetermined parameters, yet the broker's broker believed it might have been submitted in error (*e.g.*, because it significantly exceeded the cover bid), the broker's broker would be required to obtain the seller's consent before contacting the bidder. In all events, under Proposed Rule G-43(c)(i)(D), the broker's broker would be required to notify the seller if the high bidder's bid or the cover bid had been changed prior to execution and provide the seller with the original and changed bids.

Under Proposed Rule G-43(b)(v), a broker's broker would be required to notify the seller if the highest bid received in a bid-wanted was below the predetermined parameters and receive the seller's oral or written consent before proceeding with the trade. This required notice would have the effect of notifying the selling dealer that the

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[6] A broker's broker that did not avail itself of the safe harbor in section (b) would still be subject to sections (a), (c), and (d) of Proposed Rule G-43.

high bid in a bid-wanted might be off-market. The selling dealer would then need to satisfy itself that the high bid was, in fact, fair and reasonable, if it wished to purchase the securities from its customer at that price as a principal.

Proposed Rule G-43(c) is designed to ensure that bid-wanteds and offerings are conducted in a fair manner. Many of the requirements of Proposed Rule G-43(c) would address behavior that would also be a violation of Rule G-17 (*e.g.*, the prohibitions on providing bidders with "last looks," encouraging off-market bids, engaging in self-dealing, changing bid or cover prices without permission, and failing to inform the seller of the highest bid), although the requirements of Proposed Rule G-43(c) would not supplant those of Rule G-17. Other requirements of Proposed Rule G-43(c) are designed to notify sellers and bidders of the manner in which bid-wanteds and offerings will be conducted and disclosing potential conflicts of interest on the part of broker's brokers (*e.g*., when a broker's broker has its own customers or when it allows an affiliate to enter bids). Proposed Rule G-43(c) would apply to the conduct of all bid-wanteds and offerings by broker's brokers, regardless of whether the broker's broker had elected to satisfy its Proposed Rule G-43(a)(i) pricing duty for bid-wanteds by means of the Proposed Rule G-43(b) safe harbor. A broker's broker would be required by Proposed Rule G-43(c)(i)(G) to describe the manner in which it would satisfy its Proposed Rule G-43(a)(i) pricing obligation in the case of offerings and in the case of bid-wanteds not subject to the Proposed Rule G-43(b) safe harbor.

Proposed Rule G-43(d) would contain the definitions of terms used in Proposed Rule G-43. Under Proposed Rule G-43(d)(iii), the term "broker's broker" would mean a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker, whether a separate company or part of a larger company. Certain alternative trading systems would be excepted from the definition of "broker's broker." To be excepted, the alternative trading system would be required, with respect to its municipal securities activities, to utilize only automated and electronic means to communicate with bidders and sellers in a systematic and non-discretionary fashion (with certain limited exceptions), limit any customers to sophisticated municipal market professionals, and operate in accordance with most of the provisions of Proposed Rule G-43(c). In essence, an alternative trading system qualifying for the exception from the definition of "broker's broker" would be subject to most[7] of the requirements of Proposed Rule G-43 except the Proposed Rule G-43(a)(i) pricing obligation.

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[7] Such an excepted alternative trading system would not be subject to the provision of Proposed Rule G-43(c)(i)(C) concerning compensation. It would also not be subject to the requirements of Proposed Rule G-43(c)(i)(D) and (E) in recognition of the fact that much of the municipal securities trading conducted on alternative trading systems is computerized and it would be difficult for alternative trading systems to satisfy those requirements.

SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments to Rule G-8 would require recordkeeping designed to assist in the enforcement of Proposed Rule G-43. Records would be required to be kept of bids, offers, changed bids and offers, the time of notification to the seller of the high bid, the policies and procedures of the broker's broker concerning bid-wanteds and offerings, and any agreements by which bidders and sellers agreed to joint representation by the broker's broker.

Proposed Rule G-8(a)(xxv)(D) would require broker's brokers to keep the following records of communications with bidders and sellers regarding possibly erroneous bids: the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller, if applicable, who provided that direction.

Under Proposed Rule G-8(a)(xxv)(E), the broker's broker would be required to keep records of the date and time it notified the seller that the high bid was below the predetermined parameters; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction.

Proposed Rule G-8(a)(xxv)(J) would require that each broker's broker keep a record of its predetermined parameters, its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Proposed Rule G-43(c)(i)(F).

Proposed Rule G-8(a)(xxvi) would impose comparable recordkeeping requirements on alternative trading systems.

In the case of broker's brokers or alternative trading systems that are separately operated and supervised divisions of other dealers, separately maintained or separately extractable records of the municipal securities activities of the broker's broker or alternative trading system would be required to be maintained to assist in enforcement of Proposed Rule G-43.

The proposed amendments to Rule G-9 would provide for the retention of the records described above for six years.

The proposed amendment to Rule G-18 would eliminate duplication, as the deleted text would be moved to Proposed Rule G-43(a)(i).

SUMMARY OF PROPOSED NOTICE

The Proposed Notice would discuss the duties of dealers that use the services of broker's brokers.

Under the Proposed Notice, selling dealers would be reminded that the high bid obtained in a bid-wanted or offering is not necessarily a fair and reasonable price and that such dealers have an independent duty under Rule G-30 to determine that the prices at which they purchase municipal securities as a principal from their customers are fair and reasonable. Selling dealers would be cautioned that any direction they provided to broker's brokers to "screen" other dealers from their bid-wanteds or offerings could affect whether the high bid represented a fair and reasonable price and should be limited to valid business reasons, not anti-competitive behavior. Selling dealers would be urged not to assume that their customers needed to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate their securities. The Proposed Notice also would provide that, depending upon the facts and circumstances, the use of bid-wanteds by selling dealers solely for price discovery purposes, without any intention of selling the securities through the broker's brokers might be an unfair practice within the meaning of Rule G-17.

Under the Proposed Notice, bidding dealers that submitted bids to broker's brokers that they believed were below the fair market value of the securities or that submitted "throw-away" bids to broker's brokers would violate MSRB Rule G-13. The Proposed Notice would provide that, while Rule G-30 provides that bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Securities Exchange Act ("Exchange Act"), which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Exchange Act for the following reasons. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices. Proposed Rule G-43 is designed to improve pricing in the secondary market for retail investors in municipal securities by increasing the likelihood that bid-wanteds and offerings made through broker's brokers will result in fair and reasonable prices. It would do that by encouraging the wide dissemination of bid-wanteds to those who are likely to have interest in the securities, drawing potential below market prices to the attention of selling dealers, and discouraging the type of fraudulent and unfair conduct that may result in prices that are lower than they would otherwise have been. At the same time, Proposed Rule G-43 is structured in a manner that should not impede the operation of the secondary market for municipal securities. The MSRB has worked extensively with broker's brokers and other dealers to refine the proposed rule so that it targets abuses without reducing liquidity. The proposed amendments to Rules G-8 and G-9 would assist the Commission and FINRA in the enforcement of Rule G-43. The proposed amendment to Rule G-18 would eliminate unnecessary duplication as the broker's brokers pricing obligation would be transferred to Proposed Rule G-43. The Proposed Notice would remind dealers that use the services of broker's brokers of their own pricing obligations, as sellers and as bidders. In order for retail investors to receive fair and reasonable prices for their municipal securities, all dealers in the secondary market (whether sellers, broker's brokers, or bidders) must satisfy their pricing obligations.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all broker's brokers and all alternative trading systems would have the opportunity to qualify for the exception from the definition of "broker's broker." The MSRB notes that alternative trading systems that have voice brokerage components would be subject to all of the provisions of Proposed Rule G-43 and would not be given a competitive advantage over voice brokers. The

MSRB also does not believe that the provisions of the proposed rule change would be unduly burdensome to broker's brokers or would have the effect of reducing the number of broker's brokers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others.

On September 8, 2011, the MSRB requested comment on a draft of the proposed rule change.[8] Comments were received from Bond Dealers of America ("BDA"); Tom Dolan ("Mr. Dolan"); Hartfield, Titus & Donnelly, LLC ("Hartfield Titus"); Knight BondPoint; Regional Brokers, Inc. ("RBI"); Securities Industry and Financial Markets Association ("SIFMA"); TMC Bonds L.L.C. ("TMC"); Vista Securities, Inc. ("Vista Securities"); and Wolfe & Hurst Bond Brokers, Inc. ("Wolfe & Hurst"). Summaries of those comments and the MSRB's responses follow.

References in this section 5 to "Draft Rule G-43" and "Draft Rule G-8(a)(xxv)" are to the draft version of Proposed Rule G-43 and the draft amendments to Rule G-8 upon which comment was requested in MSRB Notice 2011-50. The underlined rule text in this section does not reflect amendments agreed to by the MSRB's Board that are now included in the proposed rule change. This text has been included in this filing for the convenience of the reader because a number of the sections of the draft rule were reordered in the proposed rule change, although not substantively changed.

Draft Rule G-43(a)(i): Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

Comments: Wolfe & Hurst argued that "it is not feasible for a broker's broker to determine fair market value nor is this the role of a broker's broker." It further argued that the clients of a broker's broker, broker-dealers and bank dealers, are in a better position to make a determination as to fair market value and should therefore be responsible for making this determination, not broker's brokers.

MSRB Response: The pricing duty of a broker's broker under Draft Rule G-43(a)(i) is not new. It is the same duty as that found in existing Rule G-18. In view of the important role that a broker's broker plays in arriving at a fair and reasonable price for a retail investor in the secondary market, the MSRB considers it important to reemphasize that duty by including it in a rule directed solely to broker's brokers. Draft Rule G-43 clearly spells out the duties of broker's brokers and the conduct in which they may not engage. However, the MSRB also has proposed the companion notice on the duties of dealers using the services of broker's brokers because it agrees that both sellers

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[8] MSRB Notice 2011-50 (September 8, 2011). *See* Attachment 2.

and bidders also play an important role in the achievement of a fair and reasonable price for retail investors.

Draft Rule G-43(a)(iii): A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted or offering, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted or offering.

Comments: SIFMA requested that the reference to offerings in Draft Rule G-43(a)(iii) be removed. In the conduct of offerings, it said that the there is not, in practice, a presumption that the broker's broker is working for the seller of bonds. It agreed that the presumption is accurate in the case of bid-wanteds. SIFMA also requested that "the requirement to obtain prior written authorization from buyers and sellers should be clarified to reflect that the authorization is not intended to be required on a transaction-by-transaction basis, and that it may be included in a customer agreement or similar terms-of-use agreement for electronic systems." If a transaction-by-transaction scheme was envisioned, SIFMA requested the MSRB to reconsider such an approach, as obtaining written consents in this manner would be unworkable in practice.

Hartfield Titus also suggested restricting this section to bid-wanteds. It said that broker's broker activity in offerings is not consistent with the requirement of Draft Rule G-43(a)(iii). It said that a broker's broker works for either the seller or buyer in the negotiation, depending on which side initiates the negotiation.

RBI said that Draft Rule G-43(a)(iii) should be revised to indicate the difference between "bid-wanteds" and "offerings." It agreed that the broker's broker represents the seller in the operation of a bid-wanted auction, but did not agree that the broker's broker will always work for the seller in an "offering" as it represents the bidder and seller equally.

Wolfe & Hurst said that a broker's broker is a "dual-agent for the seller and the buyer of securities." It stated that it is not practicable to require a broker's broker to get written consent from both the buyer and seller in advance of the bid-wanted or offering. Wolfe & Hurst suggested that the definition of a broker's broker be revised to reflect the dual nature of their business. If not modified, it suggested that the provision clarify that "the clients of a broker's broker could consent to a dual-agency relationship either through an initial service agreement or through Terms of Use on the firm's website."

MSRB Response: The MSRB agrees with the comments concerning the role of a broker's broker in an offering and has modified Proposed Rule G-43(a)(iii) to remove references to "offerings" and to clarify that a broker's broker may obtain the requisite agreement in a customer agreement.

Draft Rule G-43(b)(i): Unless otherwise directed by the seller, a broker's broker must make a reasonable effort to disseminate a bid-wanted or offering widely (including, but not limited to, the underwriter of the issue and prior known bidders on the issue) to

obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

Comments: Hartfield Titus suggested restricting this section to bid-wanteds. It said that offerings are displayed by dealers on many systems and through many broker's brokers, unlike bid-wanteds, which are usually given to one broker's broker. Therefore the requirement for disseminating an offering widely is not necessary. In bid-wanteds, there is an obligation to find the buyer, but there is no such obligation for an offering. If any such an obligation does exist, it is with the seller.

SIFMA noted that, in offerings, a broker's broker will typically approach a dealer with known interest in the securities being offered or comparable securities, rather than reaching out to a wide universe of dealers.

MSRB Response: The MSRB has modified the safe harbor of Rule G-43(b) so that it applies to bid-wanteds, but not offerings, in view of the fact that most offerings are the subject of negotiations among a limited number of parties, unlike bid-wanteds, which are generally distributed widely.

Draft Rule G-43(b)(iii), (iv), (vii), and (viii):

(iii) A broker's broker may not encourage bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering.

(iv) A broker's broker may not give preferential information to bidders in bid-wanteds or offerings, including where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out"); provided, however, that after the deadline for bids has passed, bidders may be informed whether their bids are the high bids ("being used") in the bid-wanteds or offerings.

(vii) A broker's broker may not change a bid without the bidder's permission or change an offered price without the seller's permission.

(viii) A broker's broker must not fail to inform the seller of the highest bid in a bid-wanted or offering.

Comments: SIFMA said Draft Rule G-43(b) includes both safe harbor provisions and anti-fraud provisions for which the failure to adhere likely would constitute violations of Rule G-17. SIFMA thus requested that Draft Rule G-43(b)(iii), (iv), (vii), and (viii) be removed and either be published as interpretations under G-17, or moved to G-43(c).

SIFMA agreed with Draft Rule G-43(b)(iv), which prohibits broker's brokers from giving preferential treatment to bidders during a bid-wanted. However, it suggested

that broker's brokers be allowed to inform a bidder whether their bid is being used before a bid-wanted is completed. Wolfe & Hurst agreed with SIFMA.

Hartfield Titus suggested restricting Draft Rule G-43(b)(iv) to bid-wanteds. It said that offerings are traded through negotiation rather than an auction. It also suggested that broker's brokers "be allowed to give a bidder information on whether their bid is being used and subsequently prohibit them from any further bidding on the item."

TMC noted that Draft Rule G-43, by its definition, includes all of the electronic trading platforms. It said that Draft Rule G-43(b)(vii) would be meaningless as all alternative trading systems would be required to inform every registered firm that every price they post will be changed, and in multiple ways, as each recipient firm defines its own matrix. Current guidelines already prohibit unfair dealing. TMC suggested that Draft Rule G-43(b)(vii) be removed or modified to accommodate private label websites that allow customers and registered reps to view inventory.

<u>MSRB Response</u>: The MSRB agrees that Draft Rule G-43(b)(iii), (iv), (vii), and (viii) should be applicable whether or not the safe harbor is availed of by a broker's broker and has moved these provisions to Proposed Rule G-43(c). The MSRB is sensitive to the need to maintain liquidity in the secondary market for municipal securities and has, accordingly, modified the draft rule to permit a broker's broker to tell a bidder whether its bid is being used before a bid-wanted is completed. Nevertheless, to protect against gaming of the bid-wanted process, bidders would not be permitted to change their bids (other than to withdraw them) or resubmit bids for the same bid-wanted after receiving a comment. This portion of the draft rule has been moved to Proposed Rule G-43(c), so that it is applicable whether or not the safe harbor is used. As noted above, the MSRB has removed references to offerings in Proposed Rule G-43(b) and in the comparable text moved to Proposed Rule G-43(c).

The MSRB does not agree with TMC's comment. Under the proposal, a seller's consent would be required before an offered price could be changed by a broker's broker. The same would be true for alternative trading systems excepted from the rule. However, that consent could be obtained in advance (*e.g.*, in a customer agreement).

<u>Draft Rule G-43(b)(v): Notwithstanding subsection (a)(ii) of this rule, each bid-wanted or offering must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may be either a precise (or "sharp") deadline or an "around time" deadline that ends when the high bid has been provided (or "put up") to the seller.</u>

<u>Comments</u>: SIFMA agreed that bid-wanteds must have identifiable deadlines, but disagreed that the deadline for "around time" bid-wanteds should be based on when the bids are "put up" to the seller. SIFMA suggested that the deadline for "around time" bid-wanteds should be defined to occur at the time the seller informs the broker's broker that the bonds should be sold to the high bidder (when the bonds are "marked for sale"), or when the seller informs the broker's broker that the bonds will not be sold in that bid-

wanted (that the bonds "will not trade"). If neither of these events occurs in an "around time" bid-wanted, it should be deemed to terminate at the end of the trading day. SIFMA said that the rule as currently drafted would have a "detrimental effect on liquidity, especially for retail customers of the broker-dealer."

Hartfield Titus suggested restricting Draft Rule G-43(b)(v) to apply only to bid-wanteds and not to offerings. It said that current industry practices have no time limits on offerings. Hartfield Titus agreed with SIFMA that "the deadline for accepting bids on an 'around time' item be when the bonds are marked 'FOR SALE'."

RBI said that the imposition of a deadline could drastically deny the retail customer from receiving the highest bid available. RBI also noted that, in MSRB Notice 2011-18 (February 24, 2011), the MSRB stated that it "believes that most retail customers would prefer a better price to a speedy trade." RBI agreed with this and said the imposition of an arbitrary "deadline" does the opposite. "RBI believes that any deadline that is imposed upon its ability to accept bids, especially on odd-lot bid-wanted items that are being advertised as an 'around time', will be vastly detrimental to the ability of broker's brokers to provide the best price, and therefore the best execution, for the retail seller who is trying to get the best price for their municipal bonds." RBI also commented that the MSRB has not provided guidelines regarding the procedures that should be taken when late, high bids are returned to the broker's broker that cannot be reported to the seller because of this "deadline." Like SIFMA and Hartfield Titus, RBI proposed that instead of the bid deadline ending at the time that a bid is "put up" to the seller, that the bid deadline should end when the bonds are marked "for sale."

Wolfe & Hurst objected to Draft Rule G-43(b)(v). It said that the rule currently applies to both "sharp" and "around time" deadlines. It argued that the "requirement restricts the broker's broker from getting the best bid for its client, which will ultimately have a negative impact on smaller retail clients and the market as a whole. Wolfe & Hurst suggested that the "rule be modified in the case of 'around time' bid-wanteds only. Specifically, where a selling dealer requests an 'around time' deadline, the broker's broker should be permitted to accept and change bids up until the point that the trade is marked for sale. Prohibiting modification at the point where the high bid is 'put up' to the seller is restricting liquidity in the market. This rule change would be detrimental to the industry."

<u>MSRB Response</u>: The MSRB's principal reason for proposing Rule G-43 was to improve the pricing received by retail investors in the secondary market. Accordingly, the MSRB has modified the deadline provisions of the safe harbor to increase the likelihood of the receipt of higher prices. Under the revision, an "around time" deadline would end upon the earliest of: (1) the time the seller directs the broker's broker to sell the securities to the current high bidder, (2) the time the seller informs the broker's broker that the bonds will not be sold in that bid-wanted, or (3) the end of the trading day as publicly posted by the broker's broker prior to the bid-wanted. Additionally, the deadline provisions would apply only to bid-wanteds.

Draft Rule G-43(b)(vi): If the high bid received in a bid-wanted is above or below the predetermined parameters of the broker's broker and the broker's broker believes that the bid may have been submitted in error, the broker's broker may contact the bidder prior to the deadline for bids to determine whether its bid was submitted in error, without having to obtain the consent of the seller. If the high bid is not above or below the predetermined parameters but the broker's broker believes that the bid may have been submitted in error, the broker's broker must receive the permission of the seller before it may contact the bidder to determine whether its bid was submitted in error. In all events, if a bid has been changed, the broker's broker must disclose the change to the seller prior to execution and provide the seller with the original and changed bids.

Comments: Hartfield Titus suggested that there was no need to notify the seller of all changes in bids under the safe harbor and that to do so would only delay the process. It stated that such a requirement should apply only when the safe harbor was not being used.

TMC said, "The requirement of a broker's broker to contact a seller for permission to contact a bidder, when the bid itself is within the parameters of the safe harbor is neither practical nor realistic. A selling dealer, who is acting in the best interest of its selling client, is not likely to give such approval." TMC also said that "the requirement to document the communication, the original bid, and the changed bid is superfluous and an added regulatory burden."

BDA expressed concern that "if a broker's broker set the parameters too broadly on the upper end, erroneous bids would not be identified, the bidder would not be notified and might, in future dealings with that broker's broker, bid more conservatively or not at all. The result would be reduced liquidity in the market and lower prices for investors. Similarly, if the broker's broker set the parameters too narrowly on the lower end, the selling broker would receive a notice and quite likely not go through with the trade, or risk litigation if it did."

Wolfe & Hurst objected to the use of predetermined parameters for bid-wanteds. It said that erroneous bids typically occur due to human error and should not be permitted to reach the marketplace as they do not reflect an accurate bid. Wolfe & Hurst also said that "requiring a broker's broker to obtain written permission from the seller prior to contacting the owner of an erroneous bid may result in a distortion of the market." It suggested that broker's brokers be allowed to inform a bidder of "a clearly erroneous bid without the consent of the seller and without providing the same opportunity for modification to all bidders."

MSRB Response: By definition, "predetermined parameters" must be designed to identify off-market bids. Broker's brokers currently compare bids to where securities have traded before with them and where they have traded most recently, as displayed on

the MSRB's Electronic Municipal Market Access (EMMA®) System[9]. Some also subscribe to pricing services. Many broker's brokers already notify sellers and bidders if they think bids may be off-market. The requirement that they establish pre-determined parameters and use them to alert sellers and bidders to possible off-market bids simply incorporates current business practice in many cases. As markets move over time, the predetermined parameters of a broker's broker may cease to be effective in identifying off-market bids. That is the purpose of the periodic testing requirement.

The concept of "predetermined parameters" has two purposes. First, if the high bid in a bid-wanted is below the predetermined parameters, a broker's broker using the safe harbor must notify the seller of that fact, thus alerting the seller that the bid may be off market. Second, if the high bid is outside of the parameters, the broker's broker may inquire of the bidder whether its bid was in error. Considerable abuse has occurred previously when some broker's brokers signaled to bidders that they could lower their bids to be closer to cover bids. This practice resulted in less favorable prices for retail investors. Cover bids are, therefore, under the proposal not permitted to be taken into account in the pricing parameters of a broker's broker.

The MSRB has modified Proposed Rule G-43(b)(vi) to clarify that a broker's broker need only inform the seller of changes in the winning high bidder's bids and in cover bids, rather than changes to other bids. Additionally, the MSRB has clarified that the permission of a seller to contact a bidder need not be in writing, although a broker's broker must keep a written record of such communication.

Draft Rule G-43(b)(ix): If the highest bid received in a bid-wanted is below the predetermined parameters of the broker's broker, the broker's broker must disclose that fact to the seller, in which case the broker's broker may still effect the trade, if the seller acknowledges such disclosure either orally or in writing.

Comments: TMC acknowledged the MSRB's desire to limit the number of off-market trades that result from the bid-wanted process, but said that the attempt to add written communication and/or oral confirmation will greatly reduce the efficiency and accuracy of the electronic market. TMC stated that "(t)he fallacy of the proposal lies in the belief that a single model will be sufficient for determining reasonableness." TMC also noted that Draft Rule G-43(b)(ix) "still proposes that the broker's broker provide a fair price, but the Board has relaxed the requirement to include a price band." TMC responded that "its tools are designed to help with a user's valuation process, not to replace the decision maker." TMC said that "recognizing that volatile periods will generate the most exceptions with any model, the burdens placed on participants to record and acknowledge price levels will be unbearable." TMC suggested that "a standard of reasonable care for broker's brokers should include 'reasonable' tools to help with the decision process, but the construction of a scheme to establish value in a fragmented and diffuse market seems to be more appropriate for a position taker than for an intermediary."

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[9] EMMA® is a registered trademark of the MSRB.

BDA also said that it is not a function of a broker's broker to determine a fair price or a range of fair prices. It also noted a practical problem if the draft rule is applied to alternative trading systems ("ATSs"). BDA suggested that "the Proposal should not be applied to ATSs, which allow for the wide and impartial distribution of bids."

MSRB Response: The MSRB believes that the exception for certain alternative trading systems from the definition of "broker's broker" in the revised rule should address TMC's and BDA's concerns.

Draft Rule G-43(c)(i)(F): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] subject to the provisions of section (b) of this rule, if applicable, prohibit the broker's broker from providing any person other than the seller (which may receive all bid prices) and the winning bidder (which may receive only the price of the cover bid) with information about bid prices, until the bid-wanted or offering has been completed, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public.

Comments: SIFMA said Draft Rule G-43(c)(i)(F) should not apply to offerings. It also requested clarification regarding when a transaction has been completed. It suggested the appropriate point in time for the purposes of this provision should be the time at which both the purchase and sale sides of the transaction have been executed.

Hartfield Titus suggested restricting Draft Rule G-43(c)(i)(F) to apply only to bid-wanteds. It said that offer and bid information on offerings should be made available to interested parties throughout the negotiation process. Hartfield Titus also suggested that a definition of when a bid-wanted is "completed" be any of the following: "1) the item traded, *i.e.*, the sell is executed and the buy is executed; 2) the item is 'Traded Away' (it was traded by the seller to another dealer or customer); and 3) the item is identified as 'No Trade' (we are told by the seller that the item will not trade)."

MSRB Response: In response to this comment, the MSRB has removed the reference to offerings in this section of the rule and proposed a definition of when a bid-wanted will be considered "completed" that is consistent with Hartfield Titus' request.

Draft Rule G-43(c)(i)(G): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] if a broker's broker has customers, provide for the disclosure of that fact to both sellers and bidders in writing and provide for the disclosure to the seller if the high bid in a bid-wanted or offering is from a customer of the broker's broker.

Comments: Hartfield Titus suggested that generally disclosing that it has customers would be a sufficient way to inform its clients instead of telling them on a

transaction-by-transaction basis. A general statement would help the broker's broker keep anonymity in its brokering services while informing its clients that it also brokers with sophisticated municipal market professionals.

TMC supported the notion that brokers' brokers should prominently disclose the types of firms that constitute its client base but does not agree with disclosing to a seller information about the buyer of an item at the time of trade stating this to be "unfair and against the anonymous nature of the broker's market." TMC said that "[a]nonymity is an extremely important component of the utility of an intermediary (either a voice broker or an ATS) in the municipal market." It said that "[a]ny regulatory requirement that would serve to compromise anonymity would be a negative development for a market that has always given participants ways to protect their identities."

MSRB Response: The role of the broker's broker has traditionally been that of an intermediary, and the MSRB has previously said that a broker's broker has a special relationship with other dealers. Therefore, the MSRB continues to be of the view that a broker's broker should make it known to a seller if it has customers and if the high bid in a bid-wanted or offering is from a customer of the broker's broker. The MSRB has, however, modified the draft rule to clarify that the broker's broker need not disclose the name of its customer. The MSRB believes that the same concerns would exist if an affiliate of a broker's broker could bid in a bid-wanted or offering and has added comparable provisions concerning affiliates.

Draft Rule G-43(c)(i)(H): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] if the broker's broker wishes to conduct a bid-wanted in accordance with section (b) of this rule, require the broker's broker to adopt predetermined parameters for such bid-wanted, disclose such predetermined parameters in advance of the bid-wanted in which they are used, and periodically test such predetermined parameters to determine whether they have identified most bids that did not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the predetermined parameters were applied.

Comments: BDA said that the requirement that the parameters be tested periodically is problematic. It stated that Draft Rule G-43(c)(i)(H) is not clear regarding what constitutes a successful test. "If no bids exceeded the parameters, is that an indication that the parameters are correct? Or that they are too broadly set? Or does it say something about the bids."

TMC said that "providing users with useful market and security specific tools should suffice to satisfy the Board's desire to improve bid quality. If a firm uses the same systematic approach for each posted bid-wanted and has a set of tools that helps traders establish value, then there should be no need for a safe harbor."

MSRB Response: If many trades were occurring at prices outside the parameters, that would be an indication that the parameters should be adjusted. A broker's broker

could adjust its predetermined parameters as frequently as it considered necessary to adapt to changing markets, as long as the new parameters were disclosed in advance of use and not made applicable to bid-wanteds already under way.

Draft Rule G-43(d)(iii): "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

Comments: Knight BondPoint requested that the draft definition of a broker's broker be revised to clarify that "ATS operators whose platforms operate in a manner in which subscribers electronically disseminate their bids and offers broadly to other subscribers and electronically interact with such bids and offers to consummate transactions, and which offer subscribers an automated, systematic and non-discretionary platform to conduct their bids wanted auctions – are not broker's brokers for purposes of this rule."

BDA argued that the inclusion of ATSs within the definition of broker's broker is not warranted.

Wolfe & Hurst suggested a more detailed definition of broker's broker to include the nature and role of a broker's broker as well as the duties and responsibilities of a broker's broker. It argued that this would eliminate the need to include the phrase, "or that holds itself out as a broker's broker" in Draft Rule G-43(d)(iii).

TMC said that the language in Draft Rule G-43(d)(iii) on whether a firm "holds itself out as a broker's broker" discourages dealers from competitive ("in-comp") bidding. TMC requested clarification regarding the following questions: (1) As a dealer's business is not usually "principally effecting transactions for other dealers" but for its client, would a broker-dealer be exempt from the definition or is acting like a broker's broker the equivalent of "holds itself out as a broker's broker?" (2) Many dealers post the same bid-wanted with multiple broker's brokers. Does the use of multiple broker's brokers create an unfair practice with respect to G-17? (3) If a dealer uses multiple brokers, should that be disclosed to the broker so that the broker can disclose that fact to potential bidders? (4) If the same bond is out for the bid with multiple broker's brokers, and the bond can only trade once, would that be viewed negatively by the regulators, barring disclosure to the marketplace? (5) If a broker's broker receives a bid-wanted that has been posted to multiple firms, does the broker need to use the same level of care as if the item were for its own account?

MSRB Response: This proposal would not require selling dealers to keep any records or discourage competitive bidding. It also would not prevent a selling dealer from posting bid-wanteds with multiple firms. The portion of the Proposed Notice on price discovery concerns a practice of some dealers of using broker's brokers to gauge the market price of securities so that they themselves may purchase the securities rather than trading them at the high bids obtained by broker's brokers. The pricing duty of a

broker's broker does not depend upon whether the selling dealer has posted the bid-wanted with multiple broker's brokers.

The MSRB continues to be of the view that a function-based definition of "broker's broker" is appropriate, rather than a detailed list such as that proposed by Wolfe & Hurst.

The MSRB has determined that it is appropriate to except certain alternative trading systems from the definition of "broker's broker," because they do not engage in the types of voice communications that have led to abuses in the past. Nevertheless, in order to qualify for the exception, under Proposed Rule G-43(d)(iii) such systems would be subject to the same prohibitions on abusive behavior to which a broker's broker would be subject.

Miscellaneous

Comments: SIFMA said that the restrictions on control of bid-wanteds by the selling dealers in the draft interpretive notice are unreasonably restrictive. It suggested that "an appropriate standard would be to allow selling dealers discretion to control this aspect of bid-wanteds so long as they could demonstrate that any restrictions imposed were intended to benefit the selling customer, and were not intended to solely benefit the selling dealer."

MSRB Response: The MSRB is concerned that the standard for permissible screening suggested by SIFMA would be difficult to employ and to enforce. It also has the potential for resulting in a less favorable price for the customer than had the screening not occurred. Moreover, if a selling dealer's customer were to request expressly that the dealer screen certain bidders from the bid-wanted or offering for its securities, such screening would not be requested for competitive reasons.

Comments: Mr. Dolan asked whether a broker-dealer using an electronic platform is permitted to screen its competitor's bonds from the platform, thereby encouraging its customers to purchase securities from the dealer's inventory (*i.e.*, whether the MSRB had a best execution rule).

MSRB Response: The MSRB is concerned that certain dealers may be refusing to show their customers municipal securities offered by their competitors at more favorable prices than those the dealers place on the same securities in their inventory. At this time, the MSRB has no best execution rule comparable to that of the Financial Industry Regulatory Authority. As long as the price paid by the customer is fair and reasonable, there is no requirement under MSRB rules that a dealer seek out the most favorable price for its customer. The MSRB will take this comment under advisement as it continues to review its rules.

Comments: Vista Securities asked, "If there is a material change in the description of a bond being advertised for the bid, . . . is not the item as incorrectly

advertised simply invalid and any bids null and void? As opposed to the broker's broker not being 'prohibited' from notifying all bidders about material changes in a bid-wanted item, should not the broker's broker be obliged to notify all bidders that the item was incorrectly described, all bids are void, and have the seller resubmit the item for the bid if the seller so chooses? Can a potential buyer of any security, municipal or otherwise, be held to his/her bid if the security is advertised incorrectly in a material way? If an intermediary in the transaction becomes aware of the problem, should not the intermediary be obliged to halt the process?"

MSRB Response: If a broker's broker learned of material changes in a bid-wanted item it would be required by MSRB Rule G-17 to notify all bidders and accept changed bids.

Draft Rule G-8(a)(xxv)(A): [A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain the following records:] (A) all bids to purchase municipal securities, and offers to sell municipal securities, that it receives, together with the time of receipt.

Comments: SIFMA said that the requirements under Draft Rule G-8(a)(xxv)(A) are not workable or necessary for offerings. It said that applying this requirement will impose a significant recordkeeping burden on broker's brokers, and is not warranted. It requested clarification if Draft Rule G-8(a)(xxv)(A) is intended to apply only to the initial time an offering is given to a broker's broker.

Hartfield Titus said that the majority of negotiations on municipal offerings are performed through "voice brokering." Price may change many times. It suggested that the time and price record be limited to when the offering is first received, when it is updated for display or distribution, and displaying the offering as it was given to the brokers' broker or updated, by the seller. Hartfield Titus also said that there should be no requirement to record the reason.

RBI agreed that the requirements are reasonable for bid-wanteds, but said they are not workable or necessary for offerings. Negotiated offerings involve back and forth communications between a potential buyer and seller, not always resulting in a trade. RBI said the requirement would impose a significant recordkeeping burden on broker's brokers while adding no significant compliance benefits.

MSRB Response: The MSRB agrees with the comments concerning records of offers and has amended the rule to require that a broker's brokers' records concerning offers must include the time of first receipt and the time the offering has been updated for display or distribution.

Draft Rule G-8(a)(xxv)(E)-(F): [A broker's broker (as defined in Draft Rule G-43(d)(iii)) shall maintain the following records:]

(E) for all changed bids, the full name of the person at the bidder firm that authorized the change; the reason given for the change in bid; and the full name of the person at the broker's broker at whose direction the change was made;

(F) for all changed offers, the full name of the person at the seller firm that authorized the change; the reason given for the change in offering price; and the full name of the person at the broker's broker at whose direction the change was made.

Comments: Wolfe & Hurst said that the "recordkeeping requirements as set forth in the draft rule are overly burdensome to broker's brokers and would cause unnecessary delay and inefficiency in the market."

TMC said that "[r]equiring brokers' brokers to document price changes would be of no value to the market, as traders know that offering prices are always subject to change." It also added that "documenting tens of thousands of price changes on a daily bases would be cost prohibitive."

MSRB Response: The requirement that a record of the reason for a change in bid or offering price has been eliminated. However, the remaining recordkeeping requirements have not been modified. Many were suggested by broker's brokers themselves, and good records are essential for enforcement of Proposed Rule G-43.

The MSRB issued two other requests for comment on the regulation of broker's brokers prior to the request for comment described above. On September 9, 2010, the MSRB published "Request for Comment on MSRB Guidance on Broker's Brokers" ("MSRB Notice 2010-35"). In MSRB Notice 2010-35, the MSRB requested comment on an interpretive notice reviewing the fair pricing requirements of MSRB Rules G-18 and G-30 and the fair practice requirements of MSRB Rule G-17 as they applied to transactions effected by broker's brokers. It also proposed to discuss the recordkeeping and record retention requirements for broker's brokers. On February 24, 2011, the MSRB published "Request for Comment on Draft Broker's Brokers Rule (Rule G-43) and Associated Recordkeeping and Transaction Amendments" ("MSRB Notice 2011-18"). In MSRB Notice 2011-18, the MSRB requested comment on the original version of Draft Rule G-43 (on broker's brokers), as well as associated draft amendments to Rule G-8 (on books and records), G-9 (on records preservation), and G-18 (on execution of transactions). Copies of MSRB Notices 2010-35 and 2011-18 and associated comment letters are included in Attachment 2 hereto. Each subsequent request for comment has included a summary of the comments received on the previous request for comment, as well as the MSRB's responses to those comments.

6. Extension of Time Period of Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice

2. September 8, 2011 Notice Requesting Comment and Comment Letters
   September 9, 2010 Notice Requesting Comment and Comment Letters
   February 24, 2011 Notice Requesting Comment and Comment Letters

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2012-04)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule G-43, on Broker's Brokers; Proposed Amendments to Rule G-8, on Books and Records, Rule G-9, on Record Retention, and Rule G-18, on Execution of Transactions; and a Proposed Interpretive Notice on the Duties of Dealers that Use the Services of Broker's Brokers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 5, 2012, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of (i) proposed MSRB Rule G-43 governing the municipal securities activities of broker's brokers and certain alternative trading systems ("Proposed Rule G-43"), (ii) proposed amendments to MSRB Rule G-8 (on recordkeeping by broker's brokers and certain alternative trading systems), MSRB Rule G-9 (on record retention), and MSRB Rule G-18 (on agency trades and trades by broker's brokers) (collectively, the "Proposed Amendments"); and (iii) a proposed interpretive notice on the duties of brokers, dealers, and municipal securities dealers ("dealers") that use the services of broker's brokers (the "Proposed Notice"). The MSRB requests that the proposed rule change be made effective six months after approval by the Commission.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB decided to consider additional rulemaking concerning broker's brokers and the dealers that use their services due to the important role that broker's brokers play in the provision of secondary market liquidity for retail investors in municipal securities. In 2004,[3] the MSRB issued a notice that, among other things, addressed the role of broker's brokers in large intra-day price differentials in the sale of retail size blocks of securities.

"Transaction Chains"

> A frequent scenario in large intra-day price differentials occurs when a single block of securities moves through a "chain" of transactions during the day. The securities involved in these scenarios often are infrequently traded issues with credits that are relatively unknown to most market participants. In a typical case, the transaction chain starts with a dealer buying securities from a customer, usually in a "retail" size block of $5,000 to $100,000. The securities are then sold through a broker's broker. Two or more inter-dealer transactions follow, with a

[3] MSRB Notice 2004-3 (January 26, 2004).

> final sale of the securities being made by a dealer to a customer. In certain cases, the difference between the price received by the selling customer and the price received by the purchasing customer is abnormally large, exceeding 10% or more. In reviewing such transaction chains, it often appears that the two dealers effecting trades with customers at each end of the chain - one dealer purchasing from a customer and the other selling to a customer - did not make excessive profits on their trades. Instead, the abnormally large intra-day price differentials can be attributed in major part to the price increases found in the inter-dealer trading occurring after the broker's broker's trade.

The MSRB deferred its rulemaking on the subject of broker's brokers until the completion of Commission and Financial Industry Regulatory Authority ("FINRA") enforcement actions, which subsequently highlighted broker's broker activities that constitute clear violations of MSRB rules.[4]

The MSRB recognizes that some broker's brokers make considerable efforts to comply with MSRB rules. However, given the nature of the rule violations brought to light by

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[4] FINRA v. Associated Bond Brokers, Inc. Letter of Acceptance, Waiver and Consent No. E052004018001 (November 19, 2007) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers); FINRA v. Butler Muni, LLC Letter of Acceptance, Waiver and Consent No. 2006007537201 (May 28, 2010) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to failure to inform the seller of higher bids submitted by the highest bidders); D. M. Keck & Company, Inc. d/b/a Discount Munibrokers, et al., Exchange Act Release No. 56543 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder; also settlement in connection with alleged violation of Rules G-14 and G-17 by broker's broker due to payment to seller of more than highest bid on some trades in return for a price lower than the highest bid on other trades, in each case reporting the fictitious trade prices to the MSRB's Real-Time Trade Reporting System); Regional Brokers, Inc. et al., Exchange Act Release No. 56542 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder; broker's broker allegedly violated Rule G-17 by accepting bids after bid deadline); SEC v. Wolfe & Hurst Bond Brokers, Inc. et al., Exchange Act Release No. 59913 (May 13, 2009) (settlement in connection with alleged violation of Rule G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder and for lowering of the highest bids to prices closer to the cover bids without informing either bidders or sellers). These cases also involved violations of Rules G-8, G-9, and G-28.

Commission and FINRA enforcement actions and the important role of broker's brokers in the provision of secondary market liquidity for retail investors, the MSRB determined that additional guidance and/or rulemaking concerning the activities of broker's brokers was warranted.

Summary of Proposed Rule G-43

The role of the broker's broker is that of intermediary between selling dealers and bidding dealers. Proposed Rule G-43(a) would set forth the basic duties of a broker's broker to such dealers.[5] Proposed Rule G-43(a)(i) would incorporate the same basic duty currently found in Rule G-18. That is, a broker's broker would be required to make a reasonable effort to obtain a price for the dealer that was fair and reasonable in relation to prevailing market conditions. The broker's broker would be required to employ the same care and diligence in doing so as if the transaction were being done for its own account.

Proposed Rule G-43(a)(ii) would provide that a broker's broker that undertook to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities could not take any action that would work against that dealer's interest to receive advantageous pricing. Under Proposed Rule G-43(a)(iii), a broker's broker would be presumed to act for or on behalf of the seller[6] in a bid-wanted, unless both the seller and bidders agreed otherwise in writing in advance of the bid-wanted.

Proposed Rule G-43(b) would create a safe harbor. The safe harbor would provide that a broker's broker that conducted bid-wanteds in the manner described in Proposed Rule G-43(b)

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5 The duties of a broker's broker to any customers (as defined in Rule D-9) it may have are addressed under Rule G-18 (in the case of agency transactions) and Rule G-30 (in the case of principal transactions).

6 Under Proposed Rule G-43(d)(ix), "seller" would mean the selling dealer, or potentially selling dealer, in a bid-wanted or offering and would not include the customer of a selling dealer.

would satisfy its pricing duty under Proposed Rule G-43(a)(i).[7] The provisions of the safe harbor are designed to increase the likelihood that the highest bid in the bid-wanted is fair and reasonable.

Proposed Rule G-43(b)(i) and (ii) would require a broker's broker to disseminate a bid-wanted widely and, in the case of securities of limited interest, to make a reasonable effort to reach dealers with specific knowledge of the issue or known interest in comparable securities.

Proposed Rule G-43(b)(iii) would require that each bid-wanted have a deadline for the acceptance of bids to assist in measuring compliance with the safe harbor.

Proposed Rule G-43(c)(i)(F) would require broker's brokers that availed themselves of the safe harbor to use predetermined parameters designed to identify possible off-market bids in the conduct of bid-wanteds. For example, the predetermined parameters could be based on yield curves, pricing services, recent trades reported to the MSRB's Real-Time Trade Reporting System (RTRS), or bids submitted to a broker's broker in previous bid-wanteds or offerings. Broker's brokers would be required to test the predetermined parameters periodically to see whether they were achieving their designed purpose.

Proposed Rule G-43(b)(iv) would permit a broker's broker that availed itself of the safe harbor to contact the high bidder in a bid-wanted about its bid price prior to the deadline for bids without the seller's consent, if the bid was outside of the predetermined parameters described above and the broker's broker believed that the bid might have been submitted in error. If the high bid was within the predetermined parameters, yet the broker's broker believed it might have been submitted in error (e.g., because it significantly exceeded the cover bid), the broker's broker

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7 A broker's broker that did not avail itself of the safe harbor in section (b) would still be subject to sections (a), (c), and (d) of Proposed Rule G-43.

would be required to obtain the seller's consent before contacting the bidder. In all events, under Proposed Rule G-43(c)(i)(D), the broker's broker would be required to notify the seller if the high bidder's bid or the cover bid had been changed prior to execution and provide the seller with the original and changed bids.

Under Proposed Rule G-43(b)(v), a broker's broker would be required to notify the seller if the highest bid received in a bid-wanted was below the predetermined parameters and receive the seller's oral or written consent before proceeding with the trade. This required notice would have the effect of notifying the selling dealer that the high bid in a bid-wanted might be off-market. The selling dealer would then need to satisfy itself that the high bid was, in fact, fair and reasonable, if it wished to purchase the securities from its customer at that price as a principal.

Proposed Rule G-43(c) is designed to ensure that bid-wanteds and offerings are conducted in a fair manner. Many of the requirements of Proposed Rule G-43(c) would address behavior that would also be a violation of Rule G-17 (e.g., the prohibitions on providing bidders with "last looks," encouraging off-market bids, engaging in self-dealing, changing bid or cover prices without permission, and failing to inform the seller of the highest bid), although the requirements of Proposed Rule G-43(c) would not supplant those of Rule G-17. Other requirements of Proposed Rule G-43(c) are designed to notify sellers and bidders of the manner in which bid-wanteds and offerings will be conducted and disclosing potential conflicts of interest on the part of broker's brokers (e.g., when a broker's broker has its own customers or when it allows an affiliate to enter bids). Proposed Rule G-43(c) would apply to the conduct of all bid-wanteds and offerings by broker's brokers, regardless of whether the broker's broker had elected to satisfy its Proposed Rule G-43(a)(i) pricing duty for bid-wanteds by means of the Proposed Rule G-43(b) safe harbor. A broker's broker would be required by Proposed Rule G-

43(c)(i)(G) to describe the manner in which it would satisfy its Proposed Rule G-43(a)(i) pricing obligation in the case of offerings and in the case of bid-wanteds not subject to the Proposed Rule G-43(b) safe harbor.

Proposed Rule G-43(d) would contain the definitions of terms used in Proposed Rule G-43. Under Proposed Rule G-43(d)(iii), the term "broker's broker" would mean a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker, whether a separate company or part of a larger company. Certain alternative trading systems would be excepted from the definition of "broker's broker." To be excepted, the alternative trading system would be required, with respect to its municipal securities activities, to utilize only automated and electronic means to communicate with bidders and sellers in a systematic and non-discretionary fashion (with certain limited exceptions), limit any customers to sophisticated municipal market professionals, and operate in accordance with most of the provisions of Proposed Rule G-43(c). In essence, an alternative trading system qualifying for the exception from the definition of "broker's broker" would be subject to most[8] of the requirements of Proposed Rule G-43 except the Proposed Rule G-43(a)(i) pricing obligation.

Summary of Proposed Amendments

The proposed amendments to Rule G-8 would require recordkeeping designed to assist in the enforcement of Proposed Rule G-43. Records would be required to be kept of bids, offers, changed bids and offers, the time of notification to the seller of the high bid, the policies and

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[8] Such an excepted alternative trading system would not be subject to the provision of Proposed Rule G-43(c)(i)(C) concerning compensation. It would also not be subject to the requirements of Proposed Rule G-43(c)(i)(D) and (E) in recognition of the fact that much of the municipal securities trading conducted on alternative trading systems is computerized and it would be difficult for alternative trading systems to satisfy those requirements.

procedures of the broker's broker concerning bid-wanteds and offerings, and any agreements by which bidders and sellers agreed to joint representation by the broker's broker.

Proposed Rule G-8(a)(xxv)(D) would require broker's brokers to keep the following records of communications with bidders and sellers regarding possibly erroneous bids: the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller, if applicable, who provided that direction.

Under Proposed Rule G-8(a)(xxv)(E), the broker's broker would be required to keep records of the date and time it notified the seller that the high bid was below the predetermined parameters; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction.

Proposed Rule G-8(a)(xxv)(J) would require that each broker's broker keep a record of its predetermined parameters, its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Proposed Rule G-43(c)(i)(F).

Proposed Rule G-8(a)(xxvi) would impose comparable recordkeeping requirements on alternative trading systems.

In the case of broker's brokers or alternative trading systems that are separately operated and supervised divisions of other dealers, separately maintained or separately extractable records of the municipal securities activities of the broker's broker or alternative trading system would be required to be maintained to assist in enforcement of Proposed Rule G-43.

The proposed amendments to Rule G-9 would provide for the retention of the records described above for six years.

The proposed amendment to Rule G-18 would eliminate duplication, as the deleted text would be moved to Proposed Rule G-43(a)(i).

Summary of Proposed Notice

The Proposed Notice would discuss the duties of dealers that use the services of broker's brokers.

Under the Proposed Notice, selling dealers would be reminded that the high bid obtained in a bid-wanted or offering is not necessarily a fair and reasonable price and that such dealers have an independent duty under Rule G-30 to determine that the prices at which they purchase municipal securities as a principal from their customers are fair and reasonable. Selling dealers would be cautioned that any direction they provided to broker's brokers to "screen" other dealers from their bid-wanteds or offerings could affect whether the high bid represented a fair and reasonable price and should be limited to valid business reasons, not anti-competitive behavior. Selling dealers would be urged not to assume that their customers needed to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking

additional time to liquidate their securities. The Proposed Notice also would provide that, depending upon the facts and circumstances, the use of bid-wanteds by selling dealers solely for price discovery purposes, without any intention of selling the securities through the broker's brokers might be an unfair practice within the meaning of Rule G-17.

Under the Proposed Notice, bidding dealers that submitted bids to broker's brokers that they believed were below the fair market value of the securities or that submitted "throw-away" bids to broker's brokers would violate MSRB Rule G-13. The Proposed Notice would provide that, while Rule G-30 provides that bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Securities Exchange Act ("Exchange Act"), which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Exchange Act for the following reasons. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices. Proposed Rule G-43 is designed to improve pricing in the secondary market for retail investors in municipal securities by increasing the likelihood that bid-wanteds and offerings made through broker's brokers will result in fair and reasonable prices. It would do that by encouraging the wide dissemination of bid-wanteds to those who are likely to have interest in the securities, drawing potential below market prices to the attention of selling dealers, and discouraging the type of fraudulent and unfair conduct that may result in prices that are lower than they would otherwise have been. At the same time, Proposed Rule G-43 is structured in a manner that should not impede the operation of the secondary market for municipal securities. The MSRB has worked extensively with broker's brokers and other dealers to refine the proposed rule so that it targets abuses without reducing liquidity. The proposed amendments to Rules G-8 and G-9 would assist the Commission and FINRA in the enforcement of Rule G-43. The proposed amendment to Rule G-18 would eliminate unnecessary duplication as the broker's brokers pricing obligation would be transferred to Proposed Rule G-43. The Proposed Notice would remind dealers that use the services of broker's brokers of their own pricing obligations, as sellers and as bidders. In order for retail investors to receive fair and reasonable prices for

their municipal securities, all dealers in the secondary market (whether sellers, broker's brokers, or bidders) must satisfy their pricing obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all broker's brokers and all alternative trading systems would have the opportunity to qualify for the exception from the definition of "broker's broker." The MSRB notes that alternative trading systems that have voice brokerage components would be subject to all of the provisions of Proposed Rule G-43 and would not be given a competitive advantage over voice brokers. The MSRB also does not believe that the provisions of the proposed rule change would be unduly burdensome to broker's brokers or would have the effect of reducing the number of broker's brokers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On September 8, 2011, the MSRB requested comment on a draft of the proposed rule change.[9] Comments were received from Bond Dealers of America ("BDA"); Tom Dolan ("Mr. Dolan"); Hartfield, Titus & Donnelly, LLC ("Hartfield Titus"); Knight BondPoint; Regional Brokers, Inc. ("RBI"); Securities Industry and Financial Markets Association ("SIFMA"); TMC Bonds L.L.C. ("TMC"); Vista Securities, Inc. ("Vista Securities"); and Wolfe & Hurst Bond Brokers, Inc. ("Wolfe & Hurst"). Summaries of those comments and the MSRB's responses follow.

References in this section to "Draft Rule G-43" and "Draft Rule G-8(a)(xxv)" are to the draft version of Proposed Rule G-43 and the draft amendments to Rule G-8 upon which

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[9] MSRB Notice 2011-50 (September 8, 2011).

comment was requested in MSRB Notice 2011-50. The underlined rule text in this section does not reflect amendments agreed to by the MSRB's Board that are now included in the proposed rule change. This text has been included in this filing for the convenience of the reader because a number of the sections of the draft rule were reordered in the proposed rule change, although not substantively changed.

Draft Rule G-43(a)(i): Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

Comments: Wolfe & Hurst argued that "it is not feasible for a broker's broker to determine fair market value nor is this the role of a broker's broker." It further argued that the clients of a broker's broker, broker-dealers and bank dealers, are in a better position to make a determination as to fair market value and should therefore be responsible for making this determination, not broker's brokers.

MSRB Response: The pricing duty of a broker's broker under Draft Rule G-43(a)(i) is not new. It is the same duty as that found in existing Rule G-18. In view of the important role that a broker's broker plays in arriving at a fair and reasonable price for a retail investor in the secondary market, the MSRB considers it important to reemphasize that duty by including it in a rule directed solely to broker's brokers. Draft Rule G-43 clearly spells out the duties of broker's brokers and the conduct in which they may not engage. However, the MSRB also has proposed the companion notice on the duties of dealers using the services of broker's brokers because it

agrees that both sellers and bidders also play an important role in the achievement of a fair and reasonable price for retail investors.

Draft Rule G-43(a)(iii): A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted or offering, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted or offering.

Comments: SIFMA requested that the reference to offerings in Draft Rule G-43(a)(iii) be removed. In the conduct of offerings, it said that the there is not, in practice, a presumption that the broker's broker is working for the seller of bonds. It agreed that the presumption is accurate in the case of bid-wanteds. SIFMA also requested that "the requirement to obtain prior written authorization from buyers and sellers should be clarified to reflect that the authorization is not intended to be required on a transaction-by-transaction basis, and that it may be included in a customer agreement or similar terms-of-use agreement for electronic systems." If a transaction-by-transaction scheme was envisioned, SIFMA requested the MSRB to reconsider such an approach, as obtaining written consents in this manner would be unworkable in practice.

Hartfield Titus also suggested restricting this section to bid-wanteds. It said that broker's broker activity in offerings is not consistent with the requirement of Draft Rule G-43(a)(iii). It said that a broker's broker works for either the seller or buyer in the negotiation, depending on which side initiates the negotiation.

RBI said that Draft Rule G-43(a)(iii) should be revised to indicate the difference between "bid-wanteds" and "offerings." It agreed that the broker's broker represents the seller in the operation of a bid-wanted auction, but did not agree that the broker's broker will always work for the seller in an "offering" as it represents the bidder and seller equally.

Wolfe & Hurst said that a broker's broker is a "dual-agent for the seller and the buyer of securities." It stated that it is not practicable to require a broker's broker to get written consent from both the buyer and seller in advance of the bid-wanted or offering. Wolfe & Hurst suggested that the definition of a broker's broker be revised to reflect the dual nature of their business. If not modified, it suggested that the provision clarify that "the clients of a broker's broker could consent to a dual-agency relationship either through an initial service agreement or through Terms of Use on the firm's website."

MSRB Response: The MSRB agrees with the comments concerning the role of a broker's broker in an offering and has modified Proposed Rule G-43(a)(iii) to remove references to "offerings" and to clarify that a broker's broker may obtain the requisite agreement in a customer agreement.

Draft Rule G-43(b)(i): Unless otherwise directed by the seller, a broker's broker must make a reasonable effort to disseminate a bid-wanted or offering widely (including, but not limited to, the underwriter of the issue and prior known bidders on the issue) to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

Comments: Hartfield Titus suggested restricting this section to bid-wanteds. It said that offerings are displayed by dealers on many systems and through many broker's brokers, unlike bid-wanteds, which are usually given to one broker's broker. Therefore the requirement for disseminating an offering widely is not necessary. In bid-wanteds, there is an obligation to find the buyer, but there is no such obligation for an offering. If any such an obligation does exist, it is with the seller.

SIFMA noted that, in offerings, a broker's broker will typically approach a dealer with known interest in the securities being offered or comparable securities, rather than reaching out to a wide universe of dealers.

MSRB Response: The MSRB has modified the safe harbor of Rule G-43(b) so that it applies to bid-wanteds, but not offerings, in view of the fact that most offerings are the subject of negotiations among a limited number of parties, unlike bid-wanteds, which are generally distributed widely.

Draft Rule G-43(b)(iii), (iv), (vii), and (viii):

(iii) A broker's broker may not encourage bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering.

(iv) A broker's broker may not give preferential information to bidders in bid-wanteds or offerings, including where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out"); provided, however, that after the deadline for bids has passed, bidders may be informed whether their bids are the high bids ("being used") in the bid-wanteds or offerings.

(vii) A broker's broker may not change a bid without the bidder's permission or change an offered price without the seller's permission.

(viii) A broker's broker must not fail to inform the seller of the highest bid in a bid-wanted or offering.

Comments: SIFMA said Draft Rule G-43(b) includes both safe harbor provisions and anti-fraud provisions for which the failure to adhere likely would constitute violations of Rule G-17. SIFMA thus requested that Draft Rule G-43(b)(iii), (iv), (vii), and (viii) be removed and either be published as interpretations under G-17, or moved to G-43(c).

SIFMA agreed with Draft Rule G-43(b)(iv), which prohibits broker's brokers from giving preferential treatment to bidders during a bid-wanted. However, it suggested that broker's brokers be allowed to inform a bidder whether their bid is being used before a bid-wanted is completed. Wolfe & Hurst agreed with SIFMA.

Hartfield Titus suggested restricting Draft Rule G-43(b)(iv) to bid-wanteds. It said that offerings are traded through negotiation rather than an auction. It also suggested that broker's brokers "be allowed to give a bidder information on whether their bid is being used and subsequently prohibit them from any further bidding on the item."

TMC noted that Draft Rule G-43, by its definition, includes all of the electronic trading platforms. It said that Draft Rule G-43(b)(vii) would be meaningless as all alternative trading systems would be required to inform every registered firm that every price they post will be changed, and in multiple ways, as each recipient firm defines its own matrix. Current guidelines already prohibit unfair dealing. TMC suggested that Draft Rule G-43(b)(vii) be removed or modified to accommodate private label websites that allow customers and registered reps to view inventory.

MSRB Response: The MSRB agrees that Draft Rule G-43(b)(iii), (iv), (vii), and (viii) should be applicable whether or not the safe harbor is availed of by a broker's broker and has moved these provisions to Proposed Rule G-43(c). The MSRB is sensitive to the need to maintain liquidity in the secondary market for municipal securities and has, accordingly, modified the draft rule to permit a broker's broker to tell a bidder whether its bid is being used before a bid-wanted is completed. Nevertheless, to protect against gaming of the bid-wanted process, bidders would not be permitted to change their bids (other than to withdraw them) or resubmit bids for the same bid-wanted after receiving a comment. This portion of the draft rule

has been moved to Proposed Rule G-43(c), so that it is applicable whether or not the safe harbor is used. As noted above, the MSRB has removed references to offerings in Proposed Rule G-43(b) and in the comparable text moved to Proposed Rule G-43(c).

The MSRB does not agree with TMC's comment. Under the proposal, a seller's consent would be required before an offered price could be changed by a broker's broker. The same would be true for alternative trading systems excepted from the rule. However, that consent could be obtained in advance (e.g., in a customer agreement).

Draft Rule G-43(b)(v): Notwithstanding subsection (a)(ii) of this rule, each bid-wanted or offering must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may be either a precise (or "sharp") deadline or an "around time" deadline that ends when the high bid has been provided (or "put up") to the seller.

Comments: SIFMA agreed that bid-wanteds must have identifiable deadlines, but disagreed that the deadline for "around time" bid-wanteds should be based on when the bids are "put up" to the seller. SIFMA suggested that the deadline for "around time" bid-wanteds should be defined to occur at the time the seller informs the broker's broker that the bonds should be sold to the high bidder (when the bonds are "marked for sale"), or when the seller informs the broker's broker that the bonds will not be sold in that bid-wanted (that the bonds "will not trade"). If neither of these events occurs in an "around time" bid-wanted, it should be deemed to terminate at the end of the trading day. SIFMA said that the rule as currently drafted would have a "detrimental effect on liquidity, especially for retail customers of the broker-dealer."

Hartfield Titus suggested restricting Draft Rule G-43(b)(v) to apply only to bid-wanteds and not to offerings. It said that current industry practices have no time limits on offerings.

Hartfield Titus agreed with SIFMA that "the deadline for accepting bids on an 'around time' item be when the bonds are marked 'FOR SALE'."

RBI said that the imposition of a deadline could drastically deny the retail customer from receiving the highest bid available. RBI also noted that, in MSRB Notice 2011-18 (February 24, 2011), the MSRB stated that it "believes that most retail customers would prefer a better price to a speedy trade." RBI agreed with this and said the imposition of an arbitrary "deadline" does the opposite. "RBI believes that any deadline that is imposed upon its ability to accept bids, especially on odd-lot bid-wanted items that are being advertised as an 'around time', will be vastly detrimental to the ability of broker's brokers to provide the best price, and therefore the best execution, for the retail seller who is trying to get the best price for their municipal bonds." RBI also commented that the MSRB has not provided guidelines regarding the procedures that should be taken when late, high bids are returned to the broker's broker that cannot be reported to the seller because of this "deadline." Like SIFMA and Hartfield Titus, RBI proposed that instead of the bid deadline ending at the time that a bid is "put up" to the seller, that the bid deadline should end when the bonds are marked "for sale."

Wolfe & Hurst objected to Draft Rule G-43(b)(v). It said that the rule currently applies to both "sharp" and "around time" deadlines. It argued that the "requirement restricts the broker's broker from getting the best bid for its client, which will ultimately have a negative impact on smaller retail clients and the market as a whole. Wolfe & Hurst suggested that the "rule be modified in the case of 'around time' bid-wanteds only. Specifically, where a selling dealer requests an 'around time' deadline, the broker's broker should be permitted to accept and change bids up until the point that the trade is marked for sale. Prohibiting modification at the

point where the high bid is 'put up' to the seller is restricting liquidity in the market. This rule change would be detrimental to the industry."

MSRB Response: The MSRB's principal reason for proposing Rule G-43 was to improve the pricing received by retail investors in the secondary market. Accordingly, the MSRB has modified the deadline provisions of the safe harbor to increase the likelihood of the receipt of higher prices. Under the revision, an "around time" deadline would end upon the earliest of: (1) the time the seller directs the broker's broker to sell the securities to the current high bidder, (2) the time the seller informs the broker's broker that the bonds will not be sold in that bid-wanted, or (3) the end of the trading day as publicly posted by the broker's broker prior to the bid-wanted. Additionally, the deadline provisions would apply only to bid-wanteds.

Draft Rule G-43(b)(vi): If the high bid received in a bid-wanted is above or below the predetermined parameters of the broker's broker and the broker's broker believes that the bid may have been submitted in error, the broker's broker may contact the bidder prior to the deadline for bids to determine whether its bid was submitted in error, without having to obtain the consent of the seller. If the high bid is not above or below the predetermined parameters but the broker's broker believes that the bid may have been submitted in error, the broker's broker must receive the permission of the seller before it may contact the bidder to determine whether its bid was submitted in error. In all events, if a bid has been changed, the broker's broker must disclose the change to the seller prior to execution and provide the seller with the original and changed bids.

Comments: Hartfield Titus suggested that there was no need to notify the seller of all changes in bids under the safe harbor and that to do so would only delay the process. It stated that such a requirement should apply only when the safe harbor was not being used.

TMC said, "The requirement of a broker's broker to contact a seller for permission to contact a bidder, when the bid itself is within the parameters of the safe harbor is neither practical nor realistic. A selling dealer, who is acting in the best interest of its selling client, is not likely to give such approval." TMC also said that "the requirement to document the communication, the original bid, and the changed bid is superfluous and an added regulatory burden."

BDA expressed concern that "if a broker's broker set the parameters too broadly on the upper end, erroneous bids would not be identified, the bidder would not be notified and might, in future dealings with that broker's broker, bid more conservatively or not at all. The result would be reduced liquidity in the market and lower prices for investors. Similarly, if the broker's broker set the parameters too narrowly on the lower end, the selling broker would receive a notice and quite likely not go through with the trade, or risk litigation if it did."

Wolfe & Hurst objected to the use of predetermined parameters for bid-wanteds. It said that erroneous bids typically occur due to human error and should not be permitted to reach the marketplace as they do not reflect an accurate bid. Wolfe & Hurst also said that "requiring a broker's broker to obtain written permission from the seller prior to contacting the owner of an erroneous bid may result in a distortion of the market." It suggested that broker's brokers be allowed to inform a bidder of "a clearly erroneous bid without the consent of the seller and without providing the same opportunity for modification to all bidders."

MSRB Response: By definition, "predetermined parameters" must be designed to identify off-market bids. Broker's brokers currently compare bids to where securities have traded before with them and where they have traded most recently, as displayed on the MSRB's Electronic Municipal Market Access (EMMA®) System.[10] Some also subscribe to pricing services. Many broker's brokers already notify sellers and bidders if they think bids may be off-market. The requirement that they establish pre-determined parameters and use them to alert sellers and bidders to possible off-market bids simply incorporates current business practice in many cases. As markets move over time, the predetermined parameters of a broker's broker may cease to be effective in identifying off-market bids. That is the purpose of the periodic testing requirement.

The concept of "predetermined parameters" has two purposes. First, if the high bid in a bid-wanted is below the predetermined parameters, a broker's broker using the safe harbor must notify the seller of that fact, thus alerting the seller that the bid may be off market. Second, if the high bid is outside of the parameters, the broker's broker may inquire of the bidder whether its bid was in error. Considerable abuse has occurred previously when some broker's brokers signaled to bidders that they could lower their bids to be closer to cover bids. This practice resulted in less favorable prices for retail investors. Cover bids are, therefore, under the proposal not permitted to be taken into account in the pricing parameters of a broker's broker.

The MSRB has modified Proposed Rule G-43(b)(vi) to clarify that a broker's broker need only inform the seller of changes in the winning high bidder's bids and in cover bids, rather than changes to other bids. Additionally, the MSRB has clarified that the permission of a seller to

[10] EMMA® is a registered trademark of the MSRB.

contact a bidder need not be in writing, although a broker's broker must keep a written record of such communication.

Draft Rule G-43(b)(ix): If the highest bid received in a bid-wanted is below the predetermined parameters of the broker's broker, the broker's broker must disclose that fact to the seller, in which case the broker's broker may still effect the trade, if the seller acknowledges such disclosure either orally or in writing.

Comments: TMC acknowledged the MSRB's desire to limit the number of off-market trades that result from the bid-wanted process, but said that the attempt to add written communication and/or oral confirmation will greatly reduce the efficiency and accuracy of the electronic market. TMC stated that "(t)he fallacy of the proposal lies in the belief that a single model will be sufficient for determining reasonableness." TMC also noted that Draft Rule G-43(b)(ix) "still proposes that the broker's broker provide a fair price, but the Board has relaxed the requirement to include a price band." TMC responded that "its tools are designed to help with a user's valuation process, not to replace the decision maker." TMC said that "recognizing that volatile periods will generate the most exceptions with any model, the burdens placed on participants to record and acknowledge price levels will be unbearable." TMC suggested that "a standard of reasonable care for broker's brokers should include 'reasonable' tools to help with the decision process, but the construction of a scheme to establish value in a fragmented and diffuse market seems to be more appropriate for a position taker than for an intermediary."

BDA also said that it is not a function of a broker's broker to determine a fair price or a range of fair prices. It also noted a practical problem if the draft rule is applied to alternative trading systems ("ATSs"). BDA suggested that "the Proposal should not be applied to ATSs, which allow for the wide and impartial distribution of bids."

MSRB Response: The MSRB believes that the exception for certain alternative trading systems from the definition of "broker's broker" in the revised rule should address TMC's and BDA's concerns.

Draft Rule G-43(c)(i)(F): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] subject to the provisions of section (b) of this rule, if applicable, prohibit the broker's broker from providing any person other than the seller (which may receive all bid prices) and the winning bidder (which may receive only the price of the cover bid) with information about bid prices, until the bid-wanted or offering has been completed, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public.

Comments: SIFMA said Draft Rule G-43(c)(i)(F) should not apply to offerings. It also requested clarification regarding when a transaction has been completed. It suggested the appropriate point in time for the purposes of this provision should be the time at which both the purchase and sale sides of the transaction have been executed.

Hartfield Titus suggested restricting Draft Rule G-43(c)(i)(F) to apply only to bid-wanteds. It said that offer and bid information on offerings should be made available to interested parties throughout the negotiation process. Hartfield Titus also suggested that a definition of when a bid-wanted is "completed" be any of the following: "1) the item traded, *i.e.*, the sell is executed and the buy is executed; 2) the item is 'Traded Away' (it was traded by the seller to another dealer or customer); and 3) the item is identified as 'No Trade' (we are told by the seller that the item will not trade)."

MSRB Response: In response to this comment, the MSRB has removed the reference to offerings in this section of the rule and proposed a definition of when a bid-wanted will be considered "completed" that is consistent with Hartfield Titus' request.

Draft Rule G-43(c)(i)(G): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] if a broker's broker has customers, provide for the disclosure of that fact to both sellers and bidders in writing and provide for the disclosure to the seller if the high bid in a bid-wanted or offering is from a customer of the broker's broker.

Comments: Hartfield Titus suggested that generally disclosing that it has customers would be a sufficient way to inform its clients instead of telling them on a transaction-by-transaction basis. A general statement would help the broker's broker keep anonymity in its brokering services while informing its clients that it also brokers with sophisticated municipal market professionals.

TMC supported the notion that brokers' brokers should prominently disclose the types of firms that constitute its client base but does not agree with disclosing to a seller information about the buyer of an item at the time of trade stating this to be "unfair and against the anonymous nature of the broker's market." TMC said that "[a]nonymity is an extremely important component of the utility of an intermediary (either a voice broker or an ATS) in the municipal market." It said that "[a]ny regulatory requirement that would serve to compromise anonymity would be a negative development for a market that has always given participants ways to protect their identities."

MSRB Response: The role of the broker's broker has traditionally been that of an intermediary, and the MSRB has previously said that a broker's broker has a special relationship

with other dealers. Therefore, the MSRB continues to be of the view that a broker's broker should make it known to a seller if it has customers and if the high bid in a bid-wanted or offering is from a customer of the broker's broker. The MSRB has, however, modified the draft rule to clarify that the broker's broker need not disclose the name of its customer. The MSRB believes that the same concerns would exist if an affiliate of a broker's broker could bid in a bid-wanted or offering and has added comparable provisions concerning affiliates.

Draft Rule G-43(c)(i)(H): [A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:] if the broker's broker wishes to conduct a bid-wanted in accordance with section (b) of this rule, require the broker's broker to adopt predetermined parameters for such bid-wanted, disclose such predetermined parameters in advance of the bid-wanted in which they are used, and periodically test such predetermined parameters to determine whether they have identified most bids that did not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the predetermined parameters were applied.

Comments: BDA said that the requirement that the parameters be tested periodically is problematic. It stated that Draft Rule G-43(c)(i)(H) is not clear regarding what constitutes a successful test. "If no bids exceeded the parameters, is that an indication that the parameters are correct? Or that they are too broadly set? Or does it say something about the bids."

TMC said that "providing users with useful market and security specific tools should suffice to satisfy the Board's desire to improve bid quality. If a firm uses the same systematic approach for each posted bid-wanted and has a set of tools that helps traders establish value, then there should be no need for a safe harbor."

MSRB Response: If many trades were occurring at prices outside the parameters, that would be an indication that the parameters should be adjusted. A broker's broker could adjust its predetermined parameters as frequently as it considered necessary to adapt to changing markets, as long as the new parameters were disclosed in advance of use and not made applicable to bid-wanteds already under way.

Draft Rule G-43(d)(iii): "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

Comments: Knight BondPoint requested that the draft definition of a broker's broker be revised to clarify that "ATS operators whose platforms operate in a manner in which subscribers electronically disseminate their bids and offers broadly to other subscribers and electronically interact with such bids and offers to consummate transactions, and which offer subscribers an automated, systematic and non-discretionary platform to conduct their bids wanted auctions – are not broker's brokers for purposes of this rule."

BDA argued that the inclusion of ATSs within the definition of broker's broker is not warranted.

Wolfe & Hurst suggested a more detailed definition of broker's broker to include the nature and role of a broker's broker as well as the duties and responsibilities of a broker's broker. It argued that this would eliminate the need to include the phrase, "or that holds itself out as a broker's broker" in Draft Rule G-43(d)(iii).

TMC said that the language in Draft Rule G-43(d)(iii) on whether a firm "holds itself out as a broker's broker" discourages dealers from competitive ("in-comp") bidding. TMC

requested clarification regarding the following questions: (1) As a dealer's business is not usually "principally effecting transactions for other dealers" but for its client, would a broker-dealer be exempt from the definition or is acting like a broker's broker the equivalent of "holds itself out as a broker's broker?" (2) Many dealers post the same bid-wanted with multiple broker's brokers. Does the use of multiple broker's brokers create an unfair practice with respect to G-17? (3) If a dealer uses multiple brokers, should that be disclosed to the broker so that the broker can disclose that fact to potential bidders? (4) If the same bond is out for the bid with multiple broker's brokers, and the bond can only trade once, would that be viewed negatively by the regulators, barring disclosure to the marketplace? (5) If a broker's broker receives a bid-wanted that has been posted to multiple firms, does the broker need to use the same level of care as if the item were for its own account?

MSRB Response: This proposal would not require selling dealers to keep any records or discourage competitive bidding. It also would not prevent a selling dealer from posting bid-wanteds with multiple firms. The portion of the Proposed Notice on price discovery concerns a practice of some dealers of using broker's brokers to gauge the market price of securities so that they themselves may purchase the securities rather than trading them at the high bids obtained by broker's brokers. The pricing duty of a broker's broker does not depend upon whether the selling dealer has posted the bid-wanted with multiple broker's brokers.

The MSRB continues to be of the view that a function-based definition of "broker's broker" is appropriate, rather than a detailed list such as that proposed by Wolfe & Hurst.

The MSRB has determined that it is appropriate to except certain alternative trading systems from the definition of "broker's broker," because they do not engage in the types of voice communications that have led to abuses in the past. Nevertheless, in order to qualify for

the exception, under Proposed Rule G-43(d)(iii) such systems would be subject to the same prohibitions on abusive behavior to which a broker's broker would be subject.

Miscellaneous

Comments: SIFMA said that the restrictions on control of bid-wanteds by the selling dealers in the draft interpretive notice are unreasonably restrictive. It suggested that "an appropriate standard would be to allow selling dealers discretion to control this aspect of bid-wanteds so long as they could demonstrate that any restrictions imposed were intended to benefit the selling customer, and were not intended to solely benefit the selling dealer."

MSRB Response: The MSRB is concerned that the standard for permissible screening suggested by SIFMA would be difficult to employ and to enforce. It also has the potential for resulting in a less favorable price for the customer than had the screening not occurred. Moreover, if a selling dealer's customer were to request expressly that the dealer screen certain bidders from the bid-wanted or offering for its securities, such screening would not be requested for competitive reasons.

Comments: Mr. Dolan asked whether a broker-dealer using an electronic platform is permitted to screen its competitor's bonds from the platform, thereby encouraging its customers to purchase securities from the dealer's inventory (*i.e.*, whether the MSRB had a best execution rule).

MSRB Response: The MSRB is concerned that certain dealers may be refusing to show their customers municipal securities offered by their competitors at more favorable prices than those the dealers place on the same securities in their inventory. At this time, the MSRB has no best execution rule comparable to that of the Financial Industry Regulatory Authority. As long as the price paid by the customer is fair and reasonable, there is no requirement under MSRB

rules that a dealer seek out the most favorable price for its customer. The MSRB will take this comment under advisement as it continues to review its rules.

Comments: Vista Securities asked, "If there is a material change in the description of a bond being advertised for the bid, . . . is not the item as incorrectly advertised simply invalid and any bids null and void? As opposed to the broker's broker not being 'prohibited' from notifying all bidders about material changes in a bid-wanted item, should not the broker's broker be obliged to notify all bidders that the item was incorrectly described, all bids are void, and have the seller resubmit the item for the bid if the seller so chooses? Can a potential buyer of any security, municipal or otherwise, be held to his/her bid if the security is advertised incorrectly in a material way? If an intermediary in the transaction becomes aware of the problem, should not the intermediary be obliged to halt the process?"

MSRB Response: If a broker's broker learned of material changes in a bid-wanted item it would be required by MSRB Rule G-17 to notify all bidders and accept changed bids.

Draft Rule G-8(a)(xxv)(A): [A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain the following records:] (A) all bids to purchase municipal securities, and offers to sell municipal securities, that it receives, together with the time of receipt.

Comments: SIFMA said that the requirements under Draft Rule G-8(a)(xxv)(A) are not workable or necessary for offerings. It said that applying this requirement will impose a significant recordkeeping burden on broker's brokers, and is not warranted. It requested clarification if Draft Rule G-8(a)(xxv)(A) is intended to apply only to the initial time an offering is given to a broker's broker.

Hartfield Titus said that the majority of negotiations on municipal offerings are performed through "voice brokering." Price may change many times. It suggested that the time

and price record be limited to when the offering is first received, when it is updated for display or distribution, and displaying the offering as it was given to the brokers' broker or updated, by the seller. Hartfield Titus also said that there should be no requirement to record the reason.

RBI agreed that the requirements are reasonable for bid-wanteds, but said they are not workable or necessary for offerings. Negotiated offerings involve back and forth communications between a potential buyer and seller, not always resulting in a trade. RBI said the requirement would impose a significant recordkeeping burden on broker's brokers while adding no significant compliance benefits.

MSRB Response: The MSRB agrees with the comments concerning records of offers and has amended the rule to require that a broker's brokers' records concerning offers must include the time of first receipt and the time the offering has been updated for display or distribution.

Draft Rule G-8(a)(xxv)(E)-(F): [A broker's broker (as defined in Draft Rule G-43(d)(iii)) shall maintain the following records:]

(E) for all changed bids, the full name of the person at the bidder firm that authorized the change; the reason given for the change in bid; and the full name of the person at the broker's broker at whose direction the change was made;

(F) for all changed offers, the full name of the person at the seller firm that authorized the change; the reason given for the change in offering price; and the full name of the person at the broker's broker at whose direction the change was made.

Comments: Wolfe & Hurst said that the "recordkeeping requirements as set forth in the draft rule are overly burdensome to broker's brokers and would cause unnecessary delay and inefficiency in the market."

TMC said that "[r]equiring brokers' brokers to document price changes would be of no value to the market, as traders know that offering prices are always subject to change." It also added that "documenting tens of thousands of price changes on a daily bases would be cost prohibitive."

MSRB Response: The requirement that a record of the reason for a change in bid or offering price has been eliminated. However, the remaining recordkeeping requirements have not been modified. Many were suggested by broker's brokers themselves, and good records are essential for enforcement of Proposed Rule G-43.

The MSRB issued two other requests for comment on the regulation of broker's brokers prior to the request for comment described above. On September 9, 2010, the MSRB published "Request for Comment on MSRB Guidance on Broker's Brokers" ("MSRB Notice 2010-35"). In MSRB Notice 2010-35, the MSRB requested comment on an interpretive notice reviewing the fair pricing requirements of MSRB Rules G-18 and G-30 and the fair practice requirements of MSRB Rule G-17 as they applied to transactions effected by broker's brokers. It also proposed to discuss the recordkeeping and record retention requirements for broker's brokers. On February 24, 2011, the MSRB published "Request for Comment on Draft Broker's Brokers Rule (Rule G-43) and Associated Recordkeeping and Transaction Amendments" ("MSRB Notice 2011-18"). In MSRB Notice 2011-18, the MSRB requested comment on the original version of Draft Rule G-43 (on broker's brokers), as well as associated draft amendments to Rule G-8 (on books and records), G-9 (on records preservation), and G-18 (on execution of transactions). Copies of MSRB Notices 2010-35 and 2011-18 and associated comment letters are included in Attachment 2 hereto. Each subsequent request for comment has included a summary of the

comments received on the previous request for comment, as well as the MSRB's responses to those comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2012-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2012-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2012-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy
Secretary

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[11] 17 CFR 200.30-3(a)(12).

MSRB NOTICE 2011-50 (SEPTEMBER 8, 2011)

REQUEST FOR COMMENT ON REVISED DRAFT RULE G-43 (ON BROKER'S BROKERS), ASSOCIATED REVISED DRAFT AMENDMENTS TO RULE G-8 (ON BOOKS AND RECORDS) AND RULE G-9 (ON PRESERVATION OF RECORDS), AND DRAFT INTERPRETIVE NOTICE ON THE OBLIGATIONS OF DEALERS THAT USE THE SERVICES OF BROKER'S BROKERS

INTRODUCTION

The Municipal Securities Rulemaking Board ("MSRB" or "Board") is requesting comment on revisions to draft Rule G-43 (on broker's brokers) ("Revised Draft Rule G-43") and revisions to draft amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records) (the "Revised Draft Amendments"). The MSRB is also requesting comment on a draft interpretive notice concerning the obligations of brokers, dealers, and municipal securities dealers ("dealers") that use the services of broker's brokers (the "Draft Notice").

Comments should be submitted no later than November 3, 2011, and may be submitted in electronic or paper form. Electronic comments may be submitted via email to CommentLetters@msrb.org. Please indicate the notice number in the subject line of the email and, if possible, send comments in PDF format. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Peg Henry, General Counsel, Market Regulation, at 703 -797-6600.

BACKGROUND

On February 24, 2011, the MSRB issued MSRB Notice 2011-18 in which it requested comment on draft Rule G-43 (on broker's brokers) and associated draft amendments to Rule G-8 (on books and records), Rule G-9 (on preservation of records), and Rule G-18 (on execution of transactions). The Board received comments from 36 commenters. After reviewing the comments, the MSRB decided to request comment on Revised Draft Rule G-43 and the Revised Draft Amendments. The draft amendments to Rule G-18 upon which comments were requested in Notice 2011-18 are restated in this notice, but have not been revised. Revised Draft Rule G-43 would recognize that the role of the broker's broker in determining fair and reasonable prices for municipal securities is more limited than that of the selling dealers and bidding dealers that utilize the services of broker's brokers. The MSRB, therefore, also decided to request comment on the Draft Notice.

The principal provisions of Revised Draft Rule G-43, the Revised Draft Amendments, and the Draft Notice are summarized below. This summary is followed by a discussion of the comments received in response to Notice 2011-18.

SUMMARY OF REVISED DRAFT RULE G-43

Under Revised Draft Rule G-43(d)(iii), the term "broker's broker" would mean a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker, whether a separate company or part of a larger company.

The role of the broker's broker is that of intermediary between selling dealers and bidding dealers. Revised Draft Rule G-43(a) would set forth the basic duties of a broker's broker to such dealers.[2] Revised Draft Rule G-43(a)(i) would incorporate the same basic duty currently found in Rule G-18. That is, a broker's broker would be required to make a reasonable effort to obtain a price for the dealer that was fair and reasonable in relation to prevailing market conditions. The broker's broker would be required to employ the same care and diligence in doing so as if the transaction were being done for its own account.

Revised Draft Rule G-43(a)(ii) would provide that a broker's broker that undertook to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities could not take any action that would work against that dealer's interest to receive advantageous pricing. Under Revised Draft Rule G-43(a)(iii), a broker's broker would be presumed to act for or on behalf of the seller [3] in a bid-wanted or offering, unless both the seller and bidders agreed otherwise in writing in advance of the bid-wanted or offering.

Revised Draft Rule G-43(b) would create a safe harbor. The safe harbor would provide that a broker's broker that conducted bid-wanteds and offerings in the manner described in Revised Draft Rule G-43(b) would have satisfied its pricing duty under Revised Draft Rule G-43(a)(i).[4]

These provisions of the safe harbor are designed to increase the likelihood that the highest bid in the bid-wanted or offering is fair and reasonable. Many of the requirements of Revised Draft Rule G-43(b) would address behavior that would also be a violation of Rule G-17 (*e.g.*, the prohibitions on providing bidders with "last looks" and encouraging off-market bids), although the requirements of Revised Draft Rule G-43 would not supplant those of Rule G-17.

Revised Draft Rule G-43(c)(i)(H) would require broker's brokers that availed themselves of the safe harbor to use predetermined parameters designed to identify possible off-market bids in the conduct of bid-wanteds.[5] For example, the predetermined parameters could be based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids submitted to a broker's broker in previous bid-wanteds or offerings. Broker's brokers would be required to test the predetermined parameters periodically to see if they were achieving their designed purpose.

Under Revised Draft Rule G-43(b)(ix), a broker's broker would be required to notify the seller if the highest bid received in a bid-wanted was below the predetermined parameters and receive the seller's oral or written consent before proceeding with the trade. The recommended amendment would have the effect of notifying the selling dealer that the high bid in a bid-wanted might be off-market. The selling dealer would then need to satisfy itself that the high bid was, in fact, fair and reasonable, if it wished to purchase the securities from its customer at that price as a principal.

Revised Draft Rule G-43(b)(vi) would permit a broker's broker that availed itself of the safe harbor to contact the high bidder in a bid-wanted about its bid price prior to the deadline for bids without the seller's

consent, if the bid was outside of the predetermined parameters described above and the broker's broker believed that the bid might have been submitted in error. If the high bid was within the predetermined parameters, yet the broker's broker believed it might have been submitted in error (*e.g.*, because it significantly exceeded the cover bid), the broker's broker would be required to obtain the seller's consent before contacting the bidder. In all events, the broker's broker would be required to notify the seller if a bid had been changed prior to execution and provide the seller with the original and changed bids.

Revised Draft Rule G-43(b)(iv) would permit a broker's broker that availed itself of the safe harbor to notify a bidder whether its bid was being used after the deadline for bids had passed. This would allow bidders to allocate their capital otherwise. Under Revised Draft Rule G-43(b)(v), each bid-wanted or offering would be required to have a deadline for the acceptance of bids, after which the broker's broker would not be permitted to accept bids or changes to bids. That deadline could be either a precise (or "sharp") deadline or an "around time" deadline that ends when the high bid has been provided (or "put up") to the seller.

SUMMARY OF REVISED DRAFT AMENDMENTS

Revised Draft Rule G-8(a)(xxv)(I) would require that each broker's broker keep a record of its predetermined parameters, its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Revised Draft Rule G-43(c)(i)(H).

Under Revised Draft Rule G-8(a)(xxv)(D), the broker's broker would be required to keep records of the date and time it notified the seller that the high bid was below the predetermined parameters; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction.

Revised Draft Rule G-8(a)(xxv)(C) would require broker's brokers to keep the following records of communications with bidders and sellers regarding possibly erroneous bids: the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller if applicable, who provided that direction.

Records would also be required to be kept of all bids, changed bids and offers, the time of notification to the seller of the high bid, the policies and procedures of the broker's broker concerning bid-wanteds and offerings, and any agreements by which bidders and sellers agreed to joint representation by the broker's broker.

SUMMARY OF DRAFT NOTICE

The Draft Notice discusses the duties of dealers that use the services of broker's brokers. It sets forth the view of the MSRB that, while a bid-wanted or offering conducted in the manner provided in Revised Draft Rule G-43 will be an important element in the establishment of a fair and reasonable price for municipal securities in the secondary market, the failure of selling dealers and bidding dealers to satisfy their pricing duties could negate the best efforts of a broker's broker to achieve fair pricing.

Under the Draft Notice, selling dealers would be reminded that the high bid obtained in a bid-wanted or offering is not necessarily a fair and reasonable price and that such dealers have an independent duty under Rule G-30 to determine that the prices at which they purchase municipal securities as a principal from their customers are fair and reasonable. Selling dealers are cautioned that any direction they provide to broker's brokers to "screen" other dealers from their bid-wanteds or offerings could affect whether the high bid represents a fair and reasonable price and should be limited to valid business reasons other than competition. Selling dealers would be urged not to assume that their customers need to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate their securities. The Draft Notice also would provide that, depending upon the facts and circumstances, the use of bid-wanteds by selling dealers solely for price discovery purposes, without any intention of selling the securities through the broker's brokers might be an unfair practice within the meaning of Rule G-17.

Under the Draft Notice bidding dealers that submitted bids to broker's brokers that they believed were below the fair market value of the securities or that submitted "throw-away" bids to broker's brokers would violate Rule G-13. The Draft Notice provides that, while bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices.

DISCUSSION OF COMMENTS RECEIVED IN RESPONSE TO MSRB NOTICE 2011-18

Comments were received from:

- American Municipal Securities, Inc.: Letter from John C. Petagna, Jr., President, dated April 26, 2011 ("American Municipal Securities")
- Barker, Bill: E-mail dated April 18, 2011 ("Mr. Barker")
- Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated April 21, 2011 ("BDA")
- Chapdelaine & Co.: Letter from August J. Hoerrner, President, dated May 5, 2011 ("Chapdelaine")
- Conners & Company, Inc.: E-mail from Jay White dated April 13, 2011 ("Connors")
- Foard, Dale: E-mail dated April 21, 2011 ("Mr. Foard")
- Hartfield, Titus & Donnelly, LLC: Letter from Mark J. Epstein, President and Chief Executive Officer, dated April 21, 2011 ("Hartfield Titus")
- KeyBanc Capital Markets Inc.: E-mail from Michael A. Burrello, Managing Director, Municipal Trading and Underwriting, dated April 21, 2011 ("KeyBanc")
- Kiley Partners, Inc.: E-mail from Michael Kiley dated April 12, 2011 ("Kiley Partners")
- Knight BondPoint: Letter from Marshall Nicholson, Managing Director, dated April 21, 2011 ("Knight BondPoint")

- M.E. Allison & Co., Inc.: E-mail from Christopher R. Allison, Chief Financial Officer, dated April 20, 2011 ("M.E. Allison")

- National Alliance Securities: E-mail from Bob Barnette, Municipal Trader, dated April 21, 2011 ("National Alliance Securities")

- Oppenheimer & Co., Inc.: Letter from Marty Campbell, Senior Director, Municipal Underwriting & Trading ("Oppenheimer")

- Potratz, Jay: E-mail dated April 21, 2011 ("Mr. Potratz")

- R. Seelaus & Co., Inc.: E-mail from Richard Seelaus dated April 13, 2011 ("R. Seelaus")

- Regional Brokers, Inc.: Letter from Joseph A. Hemphill, III, CEO, and H. Deane Armstrong, CCO, dated April 21, 2011 ("RBI")

- Regional Brokers, Inc.: Letter from Joseph A. Hemphill, III, President and CEO, and H. Deane Armstrong, CCO, dated May 12, 2011

- RH Investment Corporation: Letter from Andrew L. "Bud" Byrnes, III, Chief Executive Officer, dated April 21, 2011 ("RH Investment")

- Robbins, Leonard Jack: Letter dated May 1, 2011 ("Mr. Robbins")

- RW Smith & Associates, Inc.: Letter from Paige W. Pierce, President and CEO, dated April 27, 2011 ("RW Smith")

- Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 29, 2011 ("SIFMA")

- Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 29, 2011 ("SIFMA MSBBs")

- Seidel & Shaw, LLC: Letter from Thomas W. Shaw, President ("Seidel")

- Sentinel Brokers Company, Inc.: E-mail from Joseph M. Lawless, President, dated April 12, 2011 ("Sentinel")

- Sentinel Brokers Company, Inc.: E-mail from Joseph M. Lawless, President, dated April 13, 2011

- Seven Points Capital: E-mail from Jerry Racasi dated April 13, 2011 ("Seven Points Capital")

- Stifel, Nicolaus & Company, Incorporated: E-mail from Andy Jackson dated April 20, 2011 ("Stifel")

- Stoever Glass & Co.: Letter from Frederick J. Stoever, President, dated April 15, 2011 ("Stoever")

- TheMuniCenter, LLC: Letter from Thomas S. Vales, Chief Executive Officer, dated April 21, 2011 ("MuniCenter")

- Tradeweb Markets LLC: Letter from John Cahalane, Managing Director, Head of Tradeweb Retail, dated May 3, 2011 ("Tradeweb")

- Walsh, John: E-mail dated April 21, 2011 ("Mr. Walsh")

- Wiley Bros.-Aintree Capital, LLC: E-mail from Keener Billups, Managing Director, dated April 26, 2011, corrects Wiley Bros.-Aintree Capital, LLC: E-mail from Keener Billups, Managing Director, dated April 13, 2011 ("Wiley Bros.")

- William Blair: E-mail from Tom Greene dated April 21, 2011 ("William Blair")

- Welbourn, Steve: E-mail dated April 21, 2011 ("Mr. Welbourn")

- Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, President, dated April 25, 2011, corrects Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, President, dated April 21, 2011 ("Wolfe & Hurst")

- Ziegler Capital Markets: E-mail from Kathleen R. Murphy dated April 13, 2011 ("Ziegler")

A summary of the comments follows:

- **Comments: Duty of the Broker's Broker -- Draft Rule G-43(a)(i).** SIFMA[6] said that it is the role of the selling dealer, not the broker's broker to determine whether the high bid is fair and reasonable. However, as to the obligation of the selling dealer, on the one hand SIFMA said that, "When a Retail Dealer receives the high bid from an MSBB on a bid wanted, it reviews that bid price *as one piece of information* in deciding whether to execute that sale at that price." At the same time, SIFMA said that, "[T]he amount of diligence required to analyze the price of these transactions, document the results of that diligence, and subject those determinations to appropriate supervisory review would greatly outweigh the financial benefit to the Retail Dealer of effecting the transaction, further impeding liquidity for retail size orders and thinly-traded issues." RW Smith said that draft Rule G-43 would impose a greater duty on broker's brokers than Rule G-18 does. It said that the fundamental responsibility of the broker's broker is to ensure that the auction is widely disseminated (unless distribution is restricted by the seller) and well-run.[7] Chapdelaine said that the purpose of a broker's broker is to solicit as many bids as possible on any given bid wanted item. Wolfe & Hurst said that the investment objectives of a broker's broker could be and most likely are different from that of the retail customer. It said that the thinly traded and non-rated nature of many securities that are the subject of many trades executed by broker's brokers made it infeasible to determine the current market value on the basis of historical information available to the broker's broker.

  Kiley Partners said that bidding is the purest form of determining market value[8] and that the bid is by its very nature reasonable and fair. [9]

  MuniCenter said that, if an alternative trading system ("ATS") makes available aggregated, *bona fide*, and executable content for comparison purposes, as well as access to reported trade activity, then it should be considered to have satisfied its obligation to provide the seller all of which it is capable of in terms of establishing an opinion of what constitutes a fair and reasonable price.

  MSRB Response. The duty of a broker's broker as set forth in draft Rule G-43(a)(i) is no broader than the duty currently set forth in Rule G-18, as interpreted by the MSRB. Nevertheless, the MSRB agrees that there is validity in the comments regarding the respective roles of the broker's broker and

the selling dealer. Accordingly, although Revised Draft Rule G-43(a)(i) remains unchanged, broker's brokers would be able to satisfy their duty under Revised Draft Rule G-43(a)(i) by conducting bid-wanteds and offerings in accordance with Revised Draft Rule G-43(b) (formerly draft Rule G-43(c)). A broker's broker that did not avail itself of this safe harbor would be required by Revised Draft Rule G-43(c)(i)(I) to describe in detail the manner in which it would satisfy its obligation under subsection (a)(i) of this rule. Additionally, draft interpretive guidance to dealers using the services of broker's brokers would remind them of their duties under MSRB rules.

- **Comments: Agency v. Principal -- Draft Rule G-43(a)(iii).** Although draft Rule G-43(a)(iii) did not address whether a broker's broker effects trades on a principal basis or an agency basis, RW Smith commented that broker's brokers never effect principal trades, as did Wolfe & Hurst. MuniCenter supported the ability of a registered ATS to represent both seller and buyer as agents when unsolicited bid-wanteds are submitted. It said that the self-directed nature of an exchange environment and the incidence of human error that invariably occurs as a result of self-directed actions should necessitate that both seller and buyer are represented by an ATS. Wolfe & Hurst said the MSRB should permit a blanket consent to dual agency relationships and that broker's brokers should not do business with firms that refused to provide such consent.

MSRB Response. Revised Draft Rule G-43(a)(iii) provides:

> A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted or offering, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted or offering.

The MSRB believes that this rule affords broker's brokers sufficient flexibility and that there is no need to characterize all broker's broker trades as agency transactions, as they are not all executed in the same manner.

- **Comments: Retail Liquidity Affected by Draft Rule G-43(a)(iv).** SIFMA said that retail liquidity would be significantly adversely affected by the rule,[10] particularly draft Rule G-43(a)(iv), which required broker's brokers to notify selling dealers if they believed that the highest bid did not represent a fair and reasonable price in relation to prevailing market conditions.

SIFMA also posed the question of whether what it characterized as a "reduction of liquidity in retail orders and thinly-traded securities" due to draft Rule G-43 would result in the need for more disclosure to investors on liquidity risk. Mr. Walsh said that draft Rule G-43 would be unworkable and would cause fewer bids and more coached bids.

BDA said that draft Rule G-43(a)(iv) would provide no benefit[11] to selling dealers, which would still have an obligation under Rule G-30 to satisfy themselves that a high bid was fair and reasonable.[12] It also said that draft Rule G-43(a)(iv) would require broker's brokers to determine in each case whether the high bid was fair and reasonable, even if only a small percentage of trades failed that test.[13] RBI requested that the MSRB clarify whether a broker's broker would be required to analyze each bid to determine whether it was fair and reasonable or, instead, only the highest bid at the time the bonds are "marked for sale."[14] It also asked whether the written document was only the responsibility of the selling dealer.

Hartfield Titus said that an acceptable alternative to draft Rule G-43(a)(iv) would be for the broker's broker to inform the dealer if it had reason to believe that a bid was either above or below certain

parameters established by the broker's broker for that purpose, and disclosed in its procedures, to follow the seller's directions on actions to take, and to keep as part of its documentation of the transaction a notation of the analysis and communication.[15]

MuniCenter said that, without further clarification or exemption, draft Rule G-43(a)(iv) would be difficult for ATSs to comply with and would require a significant redesign in systems for all market participants. It said that the vast majority of the approximately 2,000 bids received by MuniCenter daily are submitted via a direct line, whereby the posting client submits the bids wanted using an electronic protocol straight from their internal trading systems. It said that MuniCenter is unaware of the trader on the other side and only has knowledge of which firm originated the bids wanted. It said that MuniCenter learns of the bids wanted at the same time all users of the site are alerted to the bids wanted. It said that attaining written seller permission or bidder notification would be virtually impossible.

MSRB Response. The MSRB takes very seriously the need for retail secondary market liquidity. At the same time, it takes very seriously reports from FINRA that many retail investors whose brokers liquidate their municipal securities by means of a broker's broker are not receiving fair and reasonable prices for their securities. The MSRB considers the comments of Hartfield Titus to present a useful means of addressing both the concerns of commenters and those of regulators. Accordingly, Revised Draft Rule G-43 has eliminated the requirement of draft Rule G-43(a)(iv) for broker's brokers to make a judgment about the fairness of high bids received and to receive written acknowledgement of disclosure to sellers about the perceived fairness of prices. That requirement has been replaced by Revised Draft Rule G-43(b)(ix), which would require broker's brokers that availed themselves of the safe harbor to notify the seller if the highest bid received in a bid-wanted was below "predetermined parameters" and receive the seller's oral or written consent before proceeding with the trade. Revised Draft Rule G-43(d)(vii) would define "predetermined parameters" as "formulaic parameters based on objective pricing criteria that are: (A) reasonably designed to identify most bids that may not represent the fair market value of municipal securities that are the subject of bid-wanteds to which they are applied, (B) determined by the broker's broker in advance of the acceptance of bids in such bid-wanteds, and (C) systematically applied to all bids in such bid-wanteds." For example, the predetermined parameters could be based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids submitted to a broker's broker in previous bid-wanteds or offerings. Predetermined parameters could not be based on bids submitted in the bid-wanted to which they are applied (*e.g.*, cover bids). A broker's broker could establish different predetermined parameters for different types of municipal securities. Since market conditions may change, broker's brokers using the safe harbor of Revised Draft Rule G-43(b) would be required to test the predetermined parameters periodically to determine whether they were, in fact, identifying most off-market bids in the bid-wanteds in which they were used. While application of the predetermined parameters and communications with sellers could be accomplished electronically, there would be no requirement to do so. The MSRB notes that one ATS already notifies bidders automatically if their bids are outside of predetermined parameters based on recent trades and believes that existing computer programs could be modified to accommodate these requirements.

Under Revised Draft Rule G-8(a)(xxv)(D), the broker's broker would be required to keep records of: the date and time of the communication with the seller; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction. Additionally, draft interpretive guidance to dealers

using the services of broker's brokers would remind such dealers of the limits on their ability to rely on the high bids received in bid-wanteds or offerings conducted by broker's brokers to satisfy their fair pricing duty to customers under Rule G-30.

- **Comments: Bid-Wanted Process -- Draft Rule G-43(b) and (c).** Wolfe & Hurst requested clarification as to the circumstances under which compliance with draft Rule G-43(c)'s provisions concerning the conduct of a bid-wanted would not satisfy the requirements of Rule G-43(a)(i). The SIFMA MSBBs said that the specific steps on the conduct of a bid-wanted in draft Rule G-43(c) should be suggested guidance for broker's brokers, not mandatory. BDA supported the aspects of the draft rule that concerned the conduct of bid-wanteds, other than draft Rule G-43(a)(iv) and draft Rule G-43(d)(i)(H). Hartfield Titus supported the draft rule's prohibition on giving preferential information to bidders.

  MSRB Response. Under Revised Draft Rule G-43(b), there would be no circumstances under which compliance with Revised Draft Rule G-43(b) (formerly draft Rule G-43(c)) would not satisfy the requirements of draft Rule G-43(a)(i). There also would be no requirement that broker's brokers conduct bid-wanteds or offerings in accordance with the Revised Draft Rule G-43(b). If they failed to do so, however, they would need to find another way to ensure compliance with Revised Draft Rule G-43(a)(i) and describe that in detail in their policies and procedures under Revised Draft Rule G-43 (c)(i)(I).

- **Comments: Selling Dealer Control of Bid-Wanteds/Screening -- Draft Rule G-43(c)(i).** SIFMA objected to draft Rule G-43(c)(i), because it said that Retail Dealers should be able to direct the bid-wanted process (*e.g.*, timing, bidders). RBI agreed with SIFMA's comment and suggested that draft Rule G-43(c)(i) should be amended to provide, "A broker's broker must disseminate a bid wanted widely unless requested to otherwise by the seller."

  RBI said that a broker's broker is often directed by a dealer to work bonds "off the wire" or to stay away from a certain other dealer or to go to a specific number of bidders or specific bidders, due to the selling dealer's being in competition with other dealers. Hartfield Titus also said that some sellers want broker's brokers to solicit bids only from certain dealers.

  MSRB Response. The MSRB continues to be of the belief that it is appropriate to impose some structure on bid-wanteds and offerings (*e.g.*, allowing broker's brokers adequate time to solicit bids while providing reasonable deadlines for the submission of bids) in the interests of achieving fair pricing while providing fairness to bidders. However, the MSRB recognizes that there may be legitimate reasons (*e.g.*, credit concerns) why a seller might not want to have a particular buyer as a counterparty. Therefore, Revised Draft Rule G-43(b)(i) would permit a broker's broker to narrow the audience for a bid-wanted or offering at the seller's direction. Nevertheless, the Draft Notice would remind selling dealers that they should be able to demonstrate a reason other than competition (*e.g.*, credit, legal, or regulatory concerns) for directing broker's brokers to "screen" certain bidders from the receipt of bid-wanteds or offerings, because such screening may reduce the likelihood that the high bid will be at a fair and reasonable price, at which selling dealers are required to purchase municipal securities from their customers, pursuant to Rule G-30.

- **Comments: Reasonable Efforts -- Draft Rule G-43(c)(ii).** Hartfield Titus suggested that draft Rule G-43(c)(ii) should be reworded to provide:

  > If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker should make

a reasonable effort to reach dealers with specific knowledge of the issue or known interest in securities of the type being offered.[16]

MSRB Response. The MSRB agrees with this comment and has Revised Draft Rule G-43(b)(i) and (ii) (formerly draft Rule G-43(c)(i) and (ii)) accordingly.

- **Comments: Bidder Notifications -- Draft Rule G-43(c)(iv).** SIFMA[17] objected to draft Rule G-43 (c)(iv), because it said that broker's brokers should be able to tell bidders if their bids are being used, so they can deploy their capital effectively. Chapdelaine said that broker's brokers should be able to let bidders know whether their bids are being used after a "sharp bid wanted time."[18] Mr. Foard said bidders should be able to improve their bids, if the MSRB is concerned about best execution. Mr. Potratz said that requiring written communications, such as for an instruction to change a bid, would add a burden preventing timely responses to requests for bids. RH Investment said traders would be more cautious in their bidding if they could not receive "color" or "posts" on their bids from broker's brokers. It also said that broker's brokers should be able to accept bids after bid deadlines, because it would be in the best interests of the seller.

  MSRB Response. The MSRB has Revised Draft Rule G-43(b)(iv) (formerly draft Rule G-43(c)(iv)) to provide that, under the safe harbor, after the deadline for bids in a bid-wanted or offering, a broker's broker may inform bidders of whether their bids are the high bids ("being used"). However, the MSRB does not agree with Mr. Foard that bidders should be able to improve their bids after receiving such a "posting," so under Revised Draft Rule G-43(b)(v), each bid-wanted or offering, under the safe harbor, would be required have a deadline for the acceptance of bids, after which the broker's broker would not be permitted to accept bids or changes to bids. That deadline could be either a precise (or "sharp") deadline or an "around time" deadline that ended when the high bid had been provided (or "put up") to the seller, as suggested by Chapdelaine and Hartfield Titus.

- **Comments: Erroneous Bids -- Draft Rule G-43(c)(vi).** SIFMA[19] objected to draft Rule G-43(c) (vi), because it said that broker's brokers should be able to notify bidders of "clearly erroneous" bids. Furthermore, it said that the seller should not be required to provide written acknowledgement before a broker's broker could modify a bid, as per draft Rule G-43(c)(vii).[20] RBI agreed, but said that both the broker's broker and the seller should be required to document an oral discussion. Additionally, RBI said the bidder should be required to document changes to bids. BDA requested that the MSRB clarify that e-mail exchanges satisfy the requirement of a writing. Chapdelaine said that prohibiting a broker's broker from contacting bidders in an "obvious error bid situation" would result in trade reports that did not reflect market value as well as arbitrations. Hartfield Titus agreed that, if a broker's broker believed a bid had been submitted in error, before notifying the bidder, it should either get permission from the seller,[21] or provide prior notice to the seller of its procedure on erroneous bids. However, it said that giving all bidders an opportunity to adjust their bids would generally result in lower bids and introduce greater inefficiency and delay into the market. It also said that bidders notified of a potential erroneous bid should not be required to request in writing that the broker's broker adjust the bid. It said that, given the requirement to keep records of all bids, the addition of a record of the name of the party at the bidder who authorized the change in bid and their reason for the change would provide sufficient documentation for regulators to review the propriety of any changed bid on a bid-wanted. Oppenheimer suggested that one indication that a bid was erroneous would be that it was substantially above the cover bid and expressed a desire to know that so that it could adjust its bid. RH Investment said that failure to inform bidders of erroneous bids was not fair to the bidder. Wiley Bros. said that sellers might punish a bidder's mistake by forcing a sale at the erroneous bid.[22] Wolfe & Hurst said that permitting all bidders to adjust their bids in the case of one clearly erroneous bid is a "manipulation of the market." RBI said that broker's brokers should be

able to contact bidders about their bids for various reasons, including a material change in the bid wanted item (such as a change in the amount) or a change in the description that was advertised (such as the addition of a sinking fund or a call).

MSRB Response. The MSRB agrees with these comments, subject to certain limitations. Accordingly, the MSRB has Revised Draft Rule G-43(b)(vi) to permit a broker's broker that availed itself of the safe harbor to notify a bidder if it believed that its bid had been submitted in error and the bid was above or below the predetermined parameters of the broker's broker, without having to obtain the seller's consent. If a bid was within the predetermined parameters but the broker's broker believed that the bid was submitted in error, the broker's broker would be required to obtain the seller's consent before contacting the bidder. As noted above, the bids in the bid-wanted to which the predetermined parameters were being applied could not be a factor in determining the parameters themselves. Therefore, even if the cover bid were significantly below the high bid, the broker's broker would not be permitted to ask the bidder whether its bid was submitted in error as long as the high bid was within the predetermined parameters, absent the seller's prior consent. Revised Draft Rule G -43 would not prohibit broker's brokers from notifying all bidders about material changes in a bid-wanted item or offered item (*e.g.*, a change in the amount) or a change in the description that was advertised (*e.g.*, the addition of a sinking fund or call), although Rule G-43(b)(iv) would prohibit the provision of that information to certain bidders on a preferential basis. In all events, the broker's broker would be required to notify the seller if a bid had been changed prior to execution and to provide the seller with the original and changed bids.

Revised Draft Rule G-8(a)(xxv)(C) would require the broker's broker to keep the following records of each communication with a seller or bidder pursuant to Revised Draft Rule G-43(b)(vi): the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller if applicable, who provided that direction. Furthermore, under Revised Draft Rule G-8(a)(xxv)(E) and (F), broker's brokers would be required to keep records regarding changed bids and offers.

- **Comments: Disclosure of Compensation -- Draft Rule G-43(d)(i)(F).** Hartfield Titus said that broker's brokers should not be required to disclose their compensation on each transaction, but instead should only be required to provide their trading counterparties a copy of their commission schedules for transactions,[23] with such schedules required to reflect the maximum charge that the broker's broker could impose on a given transaction. It also said that all broker's broker trades are reported and matched on NSCC, which it said has no facility for such disclosure. It said that industry participants could verify the commission of a broker's broker on EMMA. Wolfe & Hurst said that all compensation should be based on commissions.

  MSRB Response. The MSRB generally agrees with these comments on compensation and has Revised Draft Rule G-43(c)(i)(D) (formerly draft Rule G-43(d)(i)(F)) to provide that a broker's broker must provide the seller and bidders with a copy of its commission or other economically similar schedules for transactions, with such schedules reflecting at a minimum the maximum charge that the broker's broker could impose on a given transaction.

- **Comments: Bidding Information -- Draft Rule G-43(d)(i)(H).** MuniCenter objected to the limits of draft Rule G-43(d)(i)(H) on dissemination of information on bids. It said that its system automatically and systematically posts bidders based on the performance of their bids, thereby rewarding

competitive bidders over other bidders. It said that it should be permitted to continue to do so as long as a systematic process was equally applied. SIFMA said that draft Rule G-43(d)(i)(H) would hamper retail liquidity. Hartfield Titus said that draft Rule G-43(d)(i)(H) is duplicative of Rule G-24 and should be eliminated. It also objected to the requirement of draft Rule G-43(d)(i)(H) that it provide all bid information to the public if it chose to disclose more information than generally permitted by the draft rule. It said that, as an ATS, access to its system was limited and that it had no other means of providing disclosure. It also said that this requirement would be burdensome for broker's brokers with limited automation. BDA supported the efforts of the MSRB to encourage the wide distribution and availability of auction results.

MSRB Response. Revised Draft Rule G-43(c)(i)(F) (formerly draft Rule G-43(d)(i)(H)) would permit a broker's broker to allow others besides the seller and the winning bidder to see bid prices after the auction has been completed. It would not require a broker's broker to provide that information to the general public. It would also remove the language that is duplicative of Rule G-24. However, broker's brokers are reminded that Rule G-24 applies to them, as it applies to other dealers. Communications with bidders regarding potentially erroneous bids would be addressed by Revised Draft Rule G-43(b), which is cross-referenced in Revised Draft Rule G-43(c)(i)(F).

- **Comments: Policies and Procedures -- Draft Rule G-43(d)(ii).** Hartfield Titus supported the requirement of draft Rule G-43(d)(ii) that broker's brokers post their policies and procedures relating to the operation of the bid-wanted process prominently on their websites, but requested clarification that there is no requirement for them to post their written supervisory procedures.

  MSRB Response. The MSRB agrees with this comment and has clarified Revised Draft Rule G-43 (c)(i) and (ii) (formerly draft Rules G-43(d)(i) and (ii)) accordingly.

- **Comments: Definition of Broker's Broker -- Draft Rule G-43(e)(iii).** RW Smith supported the definition of broker's broker set forth in SIFMA's comment letter on the MSRB's September 9, 2010 draft interpretive notice on broker's broker.[24] It said that a firm that failed to comply with the definition should not be permitted to hold itself out as a broker's broker.

  MSRB Response. The MSRB has reconsidered this comment, which was also received from SIFMA in its response to the MSRB's request for comment on draft Rule G-43. The MSRB remains of the view that:

> The definition proposed by SIFMA would make it easy for a firm to escape classification as a broker's broker and, accordingly, avoid application of the rules for broker's brokers. For example, a firm could simply carry customer accounts and avoid classification as a broker's broker, because part of the definition of a broker's broker proposed by SIFMA is that the firm not carry customer accounts. The MSRB continues to believe that the definition of broker's broker used in the Notice is the appropriate one. The MSRB definition of broker's broker (in [Revised Draft Rule G-43(d)(iii), which was formerly] draft Rule G-43(e)(iii)) is a functional definition. It focuses on the key function of a broker's broker -- effecting transactions in municipal securities on behalf of other dealers. The alternative clause "or holds itself out as a broker's broker" was included in the definition because the burden should not be on the selling dealer to know whether a firm holding itself out as a broker's broker, in fact, principally effects trades for other dealers. The key is the nature of the duty that the selling dealer should reasonably expect to have owed to it.

- **Comments: Electronic Trading Systems.** The MSRB requested comment on whether electronic trading systems should be subject to different rules than other dealers that met the definition of broker's broker in draft Rule G-43(e)(iii). SIFMA said that having separate rules for electronic trading systems would be anti-competitive[25] and might result in fewer broker's brokers, thereby limiting the options available to Retail Dealers. Hartfield Titus requested that the same rules be applied equally to voice brokers and electronic trading systems so as not to be anti-competitive. RW Smith requested that the Board specifically address the issue of electronic broker's brokers that are owned by a dealer or multiple dealers, as well as what it described as the possible conflicts of interest with members of the Board who may work for some of those dealer-owners. Seidel questioned the legality and fairness of what it referred to as a prejudice against voice brokerage (small brokerage firms) in favor of electronic trading systems (large brokerage firms).

  Knight BondPoint requested further clarification on the exact nature of the firms that qualify for consideration as a broker's broker. It said that its electronic platform protocols for its bid-wanted processes were generally consistent with the requirements of draft Rule G-43(c). However, it said that it did not think that it was effecting trades for other dealers, because its subscribers controlled the entire bid-wanted process, from posting prices to executing via the platform against another subscriber's interest that might exist on the platform. It said that firms conducting requests for quotes (or "RFQs") on the platform received responses directly from subscribers via the platform. It said that the only human interaction on an RFQ conducted through the platform was as a result of a trade problem that might have occurred after a trade had been consummated (*e.g.*, clearing changes, a retail client that sold the wrong bond, and both parties to the trade mutually agreed to any adjustments). It said that it acted neither as agent nor as principal, but rather as a communications network linking potential buyers and sellers of fixed income securities, with one exception. It said that it served as a limited riskless principal to facilitate clearance and settlement between institutions and broker-dealer liquidity providers. In response to the MSRB's question on whether an electronic trading system should be able to notify a bidder of a mistake by means of an automatically generated electronic communication based on certain predetermined criteria, RBI said that there is currently no "grid" that is efficient enough to detect improper pricing, especially with regard to thinly traded issues. It also said that a "grid" system could be gamed by a dealer that constantly submitted high (or low) numbers until the grid finally accepted the bid. RBI also said that it saw little difference between voice brokers and ATS that incorporate voice brokers.

  Tradeweb said that, although it is registered with the MSRB, it does not act as a municipal securities dealer. It said that it does not make markets, take positions, or act as a principal or riskless principal in transactions effected on its Tradeweb Retail platform. It also said that it does not participate in the clearance or settlement of trades between buyers and sellers and that, therefore, it should not be characterized as a broker's broker under MSRB rules. It requested confirmation that draft Rule G-43 did not apply to it.

  MuniCenter supported the idea of different rules for ATSs, saying that, absent an exemption from draft Rule G-43 for ATSs or modification of the draft language, the movement toward electronic trading systems and the regulatory support of exchange trading would be impaired. It also said that an exchange that treats all participants fairly should satisfy Rule G-18 by using a standard of care as if the auction process was conducted for its own account. MuniCenter also supported consideration for electronic exchanges that systematically provide all bidders and sellers with the same information with respect to the reasonableness of their bids. Furthermore, it said that early warning flags based on historic trade information and not based on any of the specific bids placed on a chosen item could not be interpreted as a conflict of interest. MuniCenter said that ATSs should be enabled to contact a

firm to relay only an electronic warning if the ATSs had not received confirmation that a bid had been checked. It also said that all ATSs should be required to provide a disclosure statement that clearly defines both the auction process and rules of engagement for both the buyer and the seller.

MSRB Response. The MSRB is not prepared at this time to exclude electronic trading systems from the definition of "broker's broker" in Revised Draft Rule G-43(d)(iii) (formerly draft Rule G-43(e)(iii)), although the MSRB will continue to study such systems to determine whether their role in the establishment of fair and reasonable prices is more appropriately addressed through Revised Draft Rule G-43 or other MSRB rules. As to the question whether dealers operating such systems are effecting trades in municipal securities, the MSRB notes that interpretive guidance on electronic trading systems it issued in 2001[26] is still in force and effect. In that interpretive guidance, the MSRB described an electronic trading system that it characterized as effecting agency trades for dealer clients.

- **Comments: Customers.** The MSRB requested comments on whether broker's brokers should be permitted to have customers. SIFMA said that broker's brokers should be permitted to have customers, because to provide otherwise would be anti-competitive. However, it said that broker's brokers with customers should be subject to the same minimum net capital requirements as a dealer that has customers (but does not carry customer accounts). The SIFMA MSBBs said that the request for comment did not sufficiently describe the rationale for the requirement that broker's brokers disclose to their dealer counterparties whether they had customers. Hartfield Titus said the requirement of draft Rule G-43(d)(i)(J) that broker's brokers disclose whether they have customers should be eliminated. It considered it anti-competitive,[27] because it would create the impression that broker's brokers with customers were suspect. MuniCenter supported allowing broker's brokers to have customers and agreed that they should disclose that to their other clients. It said that virtually all municipal ATSs had customers. It said that other rules, such as Rule 15c3-5 help regulate the behavior of a customer's interaction with debt ATSs and further support an efficient market.

  Wolfe & Hurst said that broker's brokers should be prohibited from having customers because allowing customers would place them in direct competition with their dealer clients with which, it said, they had an agency relationship.

  MSRB Response. The MSRB has determined not to amend the provisions of draft Rule G-43 to prohibit broker's brokers from having customers. However, given the special relationship between broker's brokers and other dealers that use their services, the MSRB still considers it necessary for a broker's broker that has customers to inform its dealer clients so that they will know that the broker's broker is functioning as more than an intermediary between dealers. While the MSRB respects Wolfe & Hurst's views concerning the desirability of broker's brokers having customers, it has determined that it would be anti-competitive to prohibit them from having customers, absent specific evidence of abuse. Under Revised Draft Rule G-43(c)(i)(G) (formerly draft Rule G-43(d)(i)(J)), they would be required to provide written disclosure to sellers and bidders if they had customers. They would also be required to provide disclosure to the seller if the high bid in a bid-wanted or offering was from a customer of the broker's broker.

- **Miscellaneous.**

- **Comments: Recordkeeping -- Draft Rule G-8(a)(xxv).** RBI suggested that draft Rule G-8(a)(xxv) be amended to permit satisfaction of the bid recordkeeping requirement by the entry of all bids into the broker's brokers bid-wanted system in a timely manner, together with maintenance for the applicable period.

MSRB Response. As with other records, the records maintained by broker's brokers may be retained in electronic form, as long as they meet the requirements of Rules G-9(d) and (e).

- **Comments: Additional Enforcement Rather Than New Rules.** SIFMA said that additional rulemaking is unnecessary and that additional enforcement should suffice.[28] The SIFMA MSBBs requested that the MSRB provide examples of conduct that FINRA was unable to sanction under existing MSRB rules, as well as confirming with FINRA that the behavior sanctioned in the enforcement actions continues.

  MSRB Response. While the MSRB's Rule G-17 is broad in its scope and could be used to address much of the conduct of broker's brokers described in the SEC and FINRA enforcement proceedings cited in the request for comment on draft Rule G-43, the MSRB believes that broker's brokers need more explicit direction as to the appropriate conduct of bid-wanteds and offerings. It is sometimes difficult for enforcement agencies to prove that conduct is fraudulent, and allegations that conduct is unfair under Rule G-17 are sometimes met with the argument by the alleged violators that they have not been properly put on notice of the type of conduct that is considered unfair. Accordingly, the MSRB is of the view that a specific rule governing the conduct of broker's brokers is warranted. The MSRB notes, however, that draft Rule G-43 would not replace Rule G-17, which is an over-arching rule and applies even when there is a more specific rule on point.

- **Comment: Fees.** Mr. Robbins appeared to disagree with BDA's comment letter and expressed support for a "fixed percentage financial service charge."

  MSRB Response. The MSRB does not agree that broker's brokers should be required to charge a fixed percentage financial service charge. However, under Revised Draft Rule G-43, a broker's broker is required to be compensated by commissions and to provide each of its clients with a copy of its commission schedules for transactions, with such schedules reflecting, at a minimum, the maximum charge that the broker's broker could impose on a given transaction.

- **Comment: Rule G-17.** Wolfe & Hurst and RW Smith agreed that Rule G-17 applies to broker's brokers.

  MSRB Response. The MSRB appreciates this comment.

- **Comment: Consumer Protection.** Although it disagreed with the provisions of draft Rule G-43 on erroneous bids and electronic trading systems, Sentinel said that the MSRB had taken great strides to protect the consumer in the municipal area.

  MSRB Response. The MSRB appreciates this comment.

REQUEST FOR COMMENT

The MSRB requests comments on (i) Revised Draft Rule G-43, (ii) the Revised Draft Amendments to Rules G-8 and G-9, and (iii) the Draft Notice.

September 8, 2011

* * * * *

TEXT OF REVISED DRAFT RULE G-43

Rule G-43 Broker's Brokers

(a) *Duty of Broker's Broker.*

(i) Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

(ii) A broker's broker that undertakes to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities must not take any action that works against that dealer's interest to receive advantageous pricing.

(iii) A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted or offering, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted or offering.

(b) *Conduct of Bid-Wanteds and Offerings.* A broker's broker will satisfy its obligation under subsection (a)(i) of this rule with respect to a bid-wanted or offering if it conducts that bid-wanted or offering in the following manner:

(i) Unless otherwise directed by the seller, a broker's broker must make a reasonable effort to disseminate a bid-wanted or offering widely (including, but not limited to, the underwriter of the issue and prior known bidders on the issue) to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

(ii) If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker must make a reasonable effort to reach dealers with specific knowledge of the issue or known interest in securities of the type being offered.

(iii) A broker's broker may not encourage bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering.

(iv) A broker's broker may not give preferential information to bidders in bid-wanteds or offerings, including where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out"); provided, however, that after the deadline for bids has passed, bidders may be informed whether their bids are the high bids ("being used") in the bid-wanteds or offerings.

(v) Notwithstanding subsection (a)(ii) of this rule, each bid-wanted or offering must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may be either a precise (or "sharp") deadline or an "around time" deadline that ends when the high bid has been provided (or "put up") to the seller.

(vi) If the high bid received in a bid-wanted is above or below the predetermined parameters of the broker's broker and the broker's broker believes that the bid may have been submitted in error, the broker's broker may contact the bidder prior to the deadline for bids to determine whether its bid was submitted in error, without having to obtain the consent of the seller. If the

high bid is not above or below the predetermined parameters but the broker's broker believes that the bid may have been submitted in error, the broker's broker must receive the permission of the seller before it may contact the bidder to determine whether its bid was submitted in error. In all events, if a bid has been changed, the broker's broker must disclose the change to the seller prior to execution and provide the seller with the original and changed bids.

(vii) A broker's broker may not change a bid without the bidder's permission or change an offered price without the seller's permission.

(viii) A broker's broker must not fail to inform the seller of the highest bid in a bid-wanted or offering.

(ix) If the highest bid received in a bid-wanted is below the predetermined parameters of the broker's broker, the broker's broker must disclose that fact to the seller, in which case the broker's broker may still effect the trade, if the seller acknowledges such disclosure either orally or in writing.

(c) *Policies and Procedures.*

(i) A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings, which at a minimum:

(A) require the broker's broker to disclose the nature of its undertaking for the seller and bidders in bid-wanteds and offerings;

(B) require the broker's broker to disclose the manner in which the broker's broker will conduct bid-wanteds and offerings;

(C) prohibit the broker's broker from maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;

(D) require the broker's broker to be compensated on the basis of commissions or other economically similar basis and to provide the seller and bidders with a copy of its commission or other economically similar schedules for transactions, with such schedules reflecting at a minimum the maximum charge that the broker's broker could impose on a given transaction;

(E) prohibit self-dealing by the broker's broker;

(F) subject to the provisions of section (b) of this rule if applicable, prohibit the broker's broker from providing any person other than the seller (which may receive all bid prices) and the winning bidder (which may receive only the price of the cover bid) with information about bid prices, until the bid-wanted or offering has been completed, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public.

(G) if a broker's broker has customers, provide for the disclosure of that fact to both sellers and bidders in writing and provide for the disclosure to the seller if the high bid in a bid-wanted or offering is from a customer of the broker's broker;

(H) if the broker's broker wishes to conduct a bid-wanted in accordance with section (b) of this rule, require the broker's broker to adopt predetermined parameters for such bid-wanted, disclose such predetermined parameters in advance of the bid-wanted in which they are used, and periodically test such predetermined parameters to determine whether they have identified most bids that did not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the predetermined parameters were applied; and

(I) if the broker's broker does not conduct bid-wanteds and offerings as provided in section (b) of this rule, describe in detail the manner in which the broker's broker will satisfy its obligation under subsection (a)(i) of this rule.

(ii) The broker's broker must disclose the policies and procedures adopted pursuant to subsection (c)(i) of this rule to sellers and bidders in writing at least annually and post such policies and procedures in a prominent position on its website.

(d) *Definitions.*

(i) "Bidder" means a potential buyer in a bid-wanted or offering.

(ii) "Bid-wanted" means an auction for the sale of municipal securities in which:

(A) the seller does not specify a minimum or desired price for the securities that are the subject of the auction at the commencement of the auction;

(B) the identities of the bidders and the seller are not disclosed prior to the conclusion of the auction, other than to the broker's broker;

(C) bidders must submit bids for the auctioned securities to the broker's broker; and

(D) the seller decides whether to accept the winning bid.

(iii) "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

(iv) "Cover bid" means the next best bid after the winning bid.

(v) "Dealer" means broker, dealer, or municipal securities dealer.

(vi) For purposes of this rule, "offering" means a process for the sale of municipal securities in which:

(A) the seller specifies a minimum or desired price for the securities as part of the offering, at the offering's commencement;

(B) the identities of the seller and the bidders are not disclosed prior to the conclusion of the offering; and

(C) a broker's broker negotiates between the seller and the bidders to arrive at a price acceptable to the parties.

(vii) "Predetermined parameters" means formulaic parameters based on objective pricing criteria that are: (A) reasonably designed to identify most bids that may not represent the fair market

value of municipal securities that are the subject of bid-wanteds to which they are applied, (B) determined by the broker's broker in advance of the acceptance of bids in such bid-wanteds, and (C) systematically applied to all bids in such bid-wanteds. Predetermined parameters may not be based on bids submitted in the bid-wanted to which they are applied (*e.g.* cover bids). A broker's broker may establish different predetermined parameters for different types of municipal securities.

(viii) For purposes of this rule, "seller" means the selling dealer, or potentially selling dealer, in a bid-wanted or offering and does not include the customer of a selling dealer.

* * * * *

TEXT OF REVISED DRAFT AMENDMENTS TO RULES G-8 AND G-9 AND DRAFT AMENDMENT TO RULE G-18[29]

Rule G-8

Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xxiv) No change.

(xxv) *Broker's Brokers.* A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain the following records:

(A) all bids to purchase municipal securities, and offers to sell municipal securities, that it receives, together with the time of receipt;

(B) the time that the high bid is provided to the seller; the time that the seller notifies the broker's broker that it will sell the securities at the high bid; and the time of execution of the trade;

(C) for each communication with a seller or bidder pursuant to Rule G-43(b)(vi), the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller if applicable, who provided that direction;

(D) for each communication with a seller pursuant to Rule G-43(b)(ix), the date and time of the communication; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction;

(E) for all changed bids, the full name of the person at the bidder firm that authorized the change; the reason given for the change in bid; and the full name of the person at the broker's broker at whose direction the change was made;

(F) for all changed offers, the full name of the person at the seller firm that authorized the change; the reason given for the change in offering price; and the full name of the person at the broker's broker at whose direction the change was made;

(G) a copy of any writings by which the seller and bidders agreed that the broker's broker represents either the bidders or both seller and bidders, rather than the seller alone, which writings shall include the dates and times such writings were executed; and the full names of the signatories to such writings;

(H) a copy of the policies and procedures required by Rule G-43(c); and

(I) a copy of its predetermined parameters (as defined in Rule G-43(d)(vii)), its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Rule G-43(c)(i)(H).

(b) - (e) No change.

(f) *Compliance with Rule 17a-3*. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by ~~**sub**~~paragraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; **subsection** ~~**paragraph**~~ (a)(viii); and **subsections** ~~**paragraphs**~~ (a)(xi) through (a)**(xxv)**~~**(xxiv)**~~ shall in any event be maintained.

* * * * *

Rule G-9

Preservation of Records

(a) *Records to be Preserved for Six Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) - (ix) No change.

(x) the records required to be maintained pursuant to rule G-8(a)(xviii); ~~**and**~~

(xi) the records concerning secondary market trading account transactions described in rule G-8 (a)(xxiv), provided, however, that such records need not be preserved for a secondary market trading account which is not successful in purchasing municipal securities~~.~~**; and**

(xii) the records required to be maintained pursuant to rule G-8(a)(xxv).

* * * * *

Rule G-18

Execution of Transactions

Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. ~~**A broker, dealer or municipal securities dealer acting as a "broker's broker" shall be under the same obligation with respect to the execution of a transaction in municipal securities for or on behalf of a broker, dealer, or municipal securities dealer.**~~

* * * * *

TEXT OF DRAFT NOTICE

MSRB Notice 2011-__

Notice to Dealers That Use the Services of Broker's Brokers

Introduction

In view of the important role that broker's brokers play in the provision of secondary market liquidity for municipal securities owned by retail investors, MSRB Rule G-43 sets forth particular rules to which broker's brokers are subject. Rule G-43(a)(i) provides:

> Each dealer acting as a "broker's broker"[1] with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.[2]

In guidance on broker's brokers issued in 2004,[3] the MSRB noted the role of some broker's brokers in large intra-day price differentials of infrequently traded municipal securities with credits that were relatively unknown to most market participants, especially in the case of "retail" size blocks of $5,000 to $100,000. In certain cases, differences between the prices received by the selling customers as a result of a broker's broker bid-wanted and the prices paid by the ultimate purchasing customers on the same day were 10% or more. After the securities were purchased from the broker's broker, they were sold to other dealers in a series of transactions until they eventually were purchased by other customers. The abnormally large intra-day price differentials were attributed in major part to the price increases found in the inter-dealer market occurring after the broker's brokers' trades.

Rule G-43 addresses the role of broker's brokers, including their role in such a series of transactions. It is the role of the broker's broker to conduct a properly run bid-wanted or offering and thereby satisfy its duty to make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The MSRB believes that a bid-wanted or offering conducted in the manner provided in Rule G-43 will be an important element in the establishment of a fair and reasonable price for municipal securities in the secondary market. This notice addresses the roles of other transaction participants, specifically the brokers, dealers, and municipal securities dealers ("dealers") that sell, and bid for, municipal securities in bid-wanteds and offerings conducted by broker's brokers. Those selling dealers ("sellers") and bidding dealers ("bidders") also have pricing duties under MSRB rules and their failure to satisfy those duties could negate the reasonable efforts of a broker's broker to achieve fair pricing.

Duties of Bidders

Rule G-13(b)(i) provides that, in general, "no broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation represents a bona fide bid[4] for, or offer of, municipal securities by such broker, dealer or municipal securities dealer." Rule G-13(b)(ii) provides that "[n]o broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the price stated in the quotation is based on the best judgment of such broker, dealer or municipal securities dealer of the fair market value of the securities which are the subject of the quotation at the time the quotation is made."

Dealers that submit bids to broker's brokers that they believe are below the fair market value of the securities or that submit "throw-away" bids to broker's brokers do so in violation of Rule G-13. While bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices. Throw-away bids, by definition, violate Rule G-13, because throw-away bids are arrived at without an analysis by the bidder of the fair market value of the municipal security that is the subject of the bid. A conclusion by the bidder that a security must be worth "at least that much," without any knowledge of the security or comparable securities and without any effort to analyze the security's value is not based on the best judgment of such bidder of the fair market value of the securities within the meaning of Rule G-13(b)(ii). When the MSRB first proposed Rule G-13, it explained in a February 24, 1977 letter from Frieda Wallison, Executive Director and General Counsel, MSRB, to Lee Pickard, Director, Division of Market Regulation, Securities and Exchange Commission that, among the activities that Rule G-13 was designed to prevent was the placing of a bid that is "pulled out of the air," which is another way to describe a throw-away bid.

Furthermore, when a dealer's bid is accepted and a transaction in the securities is executed, that transaction price (and accordingly the bid itself) will be disseminated within the meaning of Rule G-13(a)(i) on the MSRB's Electronic Municipal Market Access (EMMA) platform within 15 minutes after the time of trade. At that point, if the bid is off-market, it will create a misperception in the municipal marketplace of the true fair market value of the security. The fact that the bid price that wins a bid-wanted or offering may well not represent the true fair market value of the security is evidenced by the trade activity observed by enforcement agencies following such auctions. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices.

Duties of Sellers

Dealers that use the services of broker's brokers to sell municipal securities for their customers also have significant fair pricing duties under Rule G-30 when they act as a principal. As the MSRB noted in its request for comment on draft Rule G-43,[5]

> the information about the value of municipal securities provided to a selling dealer by a broker's broker is only one factor that the dealer must take into account in determining a fair and reasonable price for its customer. In fact, in 2004, the National Association of Securities Dealers ("NASD") announced that it had fined eight dealers for relying solely

on prices obtained in bid-wanteds conducted by broker's brokers, which the NASD found to be significantly below fair market value.[6] In that same year, the MSRB said that "particularly when the market value of an issue is not known, a dealer (or a broker's broker subject to the requirements of Rule G-18) may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations . . . ."

Rule G-43(b)(ix) provides for notice by broker's brokers to sellers when bids in bid-wanteds are outside of predetermined parameters that are designed to identify possible off-market bids (*e.g.*, those based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids received by broker's brokers in prior bid-wanteds or offerings). Once a seller has received such notice, it must direct the broker's broker as to whether to execute the trade at that price. That notice by the broker's broker and required action on the part of the seller should put the seller on notice that it must take additional steps to ascertain whether the high bid provided to it by the broker's broker is, in fact, a fair and reasonable price for the securities. Rule G-30 mandates that the seller, if acting as a principal, must not buy municipal securities from its customer at a price that is not fair and reasonable (taking any mark-down into account), taking into consideration all relevant factors, including the best judgment of the dealer as to the fair market value of the securities at the time of the transaction, the expense involved in effecting the transaction, the fact that the dealer is entitled to a profit, and the total dollar amount of the transaction.

The MSRB notes that Rule G-8(a)(xxv)(D) requires broker's brokers to keep records when they have provided the seller with the notice required by Rule G-43(b)(ix). Among the required records are the full name of the persons at the seller firm who received the notice, the direction given by the seller following the notice, and the full name of the person at the seller firm who provided that direction.

Rule G-43(b)(i) permits a broker's broker to limit the audience for a bid-wanted or offering at the selling dealer's direction, a practice sometimes referred to as "screening" or "filtering," because the MSRB recognizes that there may be legitimate reasons for this practice. However, the MSRB notes that such screening may reduce the likelihood that the high bid represent a fair and reasonable price. Selling dealers should, therefore, be able to demonstrate a reason other than competition (*e.g.*, credit, legal, or regulatory concerns) for directing broker's brokers to screen certain bidders from the receipt of bid-wanteds or offerings. For example, a selling dealer might maintain a list of the firms it would be unwilling to accept as a counterparty and the reasons why.

The MSRB recognizes that there may be circumstances under which customers may need to liquidate their municipal securities quickly and that there are limitations on the ability of a bid-wanted or offering to achieve a price that is comparable to recent trade prices under certain circumstances, particularly in view of its timing and the presence or absence of regular buyers in the marketplace. Nevertheless, the MSRB urges sellers not to assume that their customers need to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate the securities.

Rule G-17 requires dealers, in the conduct of their municipal securities activities, to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practice. Broker's brokers have informed the MSRB that many dealers place bid-wanteds and offerings with broker's brokers with no intention of selling the securities through the broker's brokers. Some have noted that shortly thereafter they see the same securities purchased by dealers for their

own accounts at prices that exceed the high bid obtained by the broker's brokers by only a very small amount. Other dealers have told the MSRB that they are skeptical of many of the bid-wanteds they see, because they think the bid-wanteds are only being used for price discovery by the selling dealers and are not real. Accordingly, in many cases, they do not bid. This use of broker's brokers solely for price discovery purposes harms the bid-wanted and offering process by reducing bidders, thereby reducing the likelihood that the high bid in a bid-wanted will represent the fair market value of the securities. Additionally, it causes broker's brokers to work without reasonable expectation of compensation. For those reasons, depending upon the facts and circumstances, the use of bid-wanteds solely for price discovery purposes may be an unfair practice within the meaning of Rule G-17.

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[1] Rule G-43(d)(iii) defines a "broker's broker" as "a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker."

[2] A bid-wanted or offering conducted in accordance with Rule G-43(b) will satisfy the pricing obligation of a broker's broker.

[3] MSRB Notice 2004-3 (January 26, 2004).

[4] Rule G-13(b)(iii) provides that:

> a quotation shall be deemed to represent a "bona fide bid for, or offer of, municipal securities" if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.

[5] MSRB Notice 2011-18 (February 24, 2011).

[6] *See* http://www.finra.org/Newsroom/NewsReleases/2004/P011465.

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[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[2] The duties of a broker's broker to any customers (as defined in Rule D-9) it may have are addressed under Rule G-18 (in the case of agency transactions) and Rule G-30 (in the case of principal transactions).

[3] Under Revised Draft Rule G-43(d)(viii), "seller" would mean the selling dealer, or potentially selling dealer, in a bid-wanted or offering and would not include the customer of a selling dealer.

[4] A broker's broker that did not avail itself of the safe harbor in section (b) would still be subject to sections (a), (c), and (d) of Revised Draft Rule G-43, including, but not limited to: (i) the pricing duty of Revised Draft Rule G-43(a)(i); (ii) the obligation not to take any action that would work against the interest of the dealer it represents in receiving advantageous pricing of Revised Draft Rule G-43(a)(ii); (iii) the prohibition on self-dealing of Revised Draft Rule G-43(c)(i)(E); (iv) the prohibition on providing bidders with information about bid prices until after the completion of the bid-wanted or offering of Revised Draft Rule G-43(c)(i)(F); and (v) the requirement to disclose detailed procedures for the conduct of bid-wanteds

and offerings of Revised Draft Rule G-43(c)(i)(I). Such broker's brokers would also be subject to most of the recordkeeping rules.

[5] The pre-determined parameters would not be required to be used in offerings.

[6] SIFMA submitted two comment letters, one from "municipal securities broker's brokers" or "MSBBs," and the other from dealers using the services of broker's brokers ("Retail Dealers"). In most cases, their comments overlapped. If a comment was only made by the MSBBs, it is noted as such. The MSBBs attached the comment letter they filed on the MSRB's September 2010 draft interpretive notice and reiterated those comments. A summary of those comments and the MSRB's responses is included in the Request for Comment.

See also letters of American Municipal Securities; Mr. Barker; KeyBanc; M.E. Allison; National Alliance Securities; Oppenheimer; RH Investment; Seven Points Capital; and Stoever.

[7] *See also* letters of Stifel and Wolfe & Hurst.

[8] *See also* letter of R. Seelaus.

[9] *See also* letter of Wiley Bros.

[10] *See also* letters of RW Smith; Stoever; Wiley Bros.; and Wolfe & Hurst.

[11] *See also* letter of Ziegler.

[12] *See also* letter of Hartfield Titus.

[13] *See also* letter of Hartfield Titus.

[14] Under broker's broker parlance, a bond is "marked for sale" when the selling dealer agrees to sell at a price that is at least equal to the highest bid at that time.

[15] *See also* letter of RW Smith.

[16] *See also* letter of RBI.

[17] *See also* letters of Connors; KeyBanc; RBI; Seven Points Capital; Stoever; and Wiley Bros.

[18] Hartfield Titus said such notifications should be permitted "after the bidding is closed."

[19] *See also* letters of American Municipal Securities; Mr. Barker; KeyBanc; Connors; M.E. Allison; National Alliance Securities; RH Investment; RW Smith; and Seven Points Capital.

[20] *See also* letter of RW Smith, which said that it had developed a trading platform that records all bids received, who entered the bid and the time stamp, any amendments to those bids, who made the edits and when, along with the reason why any bid was changed or withdrawn. *See also* letters of Stoever and Wiley Bros.

[21] *See also* letter of RBI. RBI also characterized a mistaken bid as "not bona fide, as required by MSRB Rule G-13." *Compare* letter of Sentinel.

[22] *See also* letter of William Blair.

[23] *See also* letter of RBI.

[24] *See also* letter of Wolfe & Hurst.

[25] *See also* letters of Hartfield Titus; RW Smith; Sentinel; and Wolfe & Hurst.

[26] *See* Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems (March 26, 2001).

[27] *See also* letter of RW Smith.

[28] *See also* letters of RW Smith and Wolfe & Hurst.

[29] Marked to show changes from existing Rules G-8, G-9, and G-18. Underlining indicates additions; strikethrough denotes deletions.

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Alphabetical List of Comments on MSRB Notice 2011-50 (September 8, 2011)

1. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated November 3, 2011
2. Dolan, Tom: Letter dated October 21, 2011
3. Hartfield, Titus & Donnelly, LLC: Letter from Mark J. Epstein, President and CEO, dated November 3, 2011
4. Knight BondPoint: Letter from Marshall Nicholson, Managing Director, dated November 3, 2011
5. Regional Brokers, Inc.: Letter from Joseph A. Hemphill III, President, and H. Deane Armstrong, CCO, dated November 1, 2011
6. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated November 2, 2011
7. TMC Bonds L.L.C.: Letter from Thomas S. Vales, Chief Executive Officer, dated November 3, 2011
8. Vista Securities, Inc.: Letter from Paul Larkin, President, dated November 1, 2011
9. Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, President, dated November 3, 2011

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November 3, 2011

VIA ELECTRONIC MAIL TO CommentLetters@msrb.org

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

Re: MSRB Notice 2011-50

Dear Mr. Smith:

The Bond Dealers of America ("BDA") is pleased to offer comments on Municipal Securities Rulemaking Board ("MSRB") Notice 2011-50: Request For Comment On Revised Draft Rule G-43 (On Broker's Brokers), Associated Revised Draft Amendments To Rule G-8 (On Books And Records) And Rule G-9 (On Preservation Of Records), And Draft Interpretive Notice On The Obligations Of Dealers That Use The Services Of Broker's Brokers (the "Proposal"). The BDA is the Washington, DC based trade association representing securities dealers and banks focused primarily on the U.S. fixed income markets.

BDA commends the MSRB for reproposing Draft Rule G-43 and for responding positively to many of the comments made on the earlier version. We particularly commend the MSRB for dropping the provision that would have required broker's brokers to make a determination that the highest bid was a fair price. As we and other commenters noted, broker's brokers are not in a position to make that determination and it would have added costs and reduced liquidity. Other significant improvements are allowing broker's brokers to notify bidders if their bids are not being used and dropping the several burdensome requirements for written notifications and acknowledgements. All of these would have seriously impeded the operation of bid wanteds and offerings via broker's brokers and would have ended up reducing liquidity for investors.

Fundamentally, however, BDA believes that this rule is not necessary. As the explanations accompanying the Proposal and the Draft Interpretive Notice make clear, the behaviors that the Proposal is meant to address are already prohibited under other MSRB rules. The information that we have from our members is that, to the extent there had been improper behavior, the enforcement actions undertaken under existing rules have resulted in broker's brokers generally being more aware of their obligations and responsibilities and improved the conduct of bid wanted and offerings. If the MSRB and FINRA have identified additional improper actions, we believe that they should pursue them and that any resulting enforcement actions will have a similar salutary effect. We believe that this is a preferable course of action to undertaking additional rulemaking. This is particularly the case because of the remaining conceptual and practical problems with the proposed parameters and because of the inclusion of ATS within the definition of broker's broker, which we believe is not warranted.

The MSRB has improved the previous version when it comes to the question of notifying a bidder of a potentially erroneous bid. The previous version would have prevented such notice without the specific

consent of the seller in writing. We are pleased to see that the MSRB no longer holds that position. In theory, the system proposed in this version would allow for clearly erroneous bids to be identified and the bidder notified in a timely manner.

However, we believe that this approach continues to suffer from a conceptual problem that existed in the earlier proposal. Namely, that the broker's broker must, in effect, determine what is a fair price, in this case what is the range of fair prices. That is not a function of a broker's broker. In addition to that conceptual problem, there is a practical one, especially if the draft rule is applied to alternative trading systems (ATS). The determination of what is the range of fair prices will necessarily have to be based on historical data. In a volatile market, you could easily have trades exceeding those historical parameters, which would necessitate contacts with either bidders or sellers. ATS receive several thousand bid wanteds a day. If an ATS received 2500 bid wanteds (not an uncommon volume) and in a volatile market 5 percent exceeded the parameters, assuming 5 minutes each to make the contacts, it would take more than 10 hours to complete the contacts.

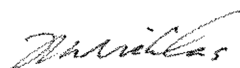
It also remains the case that if a broker's broker set the parameters too broadly on the upper end, erroneous bids would not be identified, the bidder would not be notified and might, in future dealings with that broker's broker, bid more conservatively or not at all. The result would be reduced liquidity in the market and lower prices for investors. Similarly, if the broker's broker set the parameters too narrowly on the lower end, the selling broker would receive a notice and quite likely not go through with the trade, or risk litigation if it did.

Moreover, the requirement that the parameters be tested periodically is also problematic. It is not clear what constitutes a successful test. If no bids exceeded the parameters, is that an indication that the parameters are correct? Or that they are too broadly set? Or does it say something about the bids?

If the MSRB decides to continue with this proposed rulemaking, we urge the MSRB to recognize that the trading by broker-dealers over ATS is different than trading done through the traditional broker's broker and that the Proposal should not be applied to ATS, which allow for the wide and impartial distribution of bids. These ATS effectively accomplish the goals the MSRB seeks in these rules and, as we understand, have never been implicated in the behaviors that drew the MSRB's attention to this area. They have exhibited an ability to innovate and should not be constrained by rules drawn up to deal with perceived problems of a different business model. Further, BDA believes that the availability and increasing use of ATS, with the ATS' ability to distribute widely bid wanteds and offerings in an impartial manner, have had the effect of increasing the transparency and efficiency of trades between broker-dealers and, through that competition, improved the inter-dealer trades done via both models.

Consequently, BDA urges the MSRB not to pursue this rulemaking further.

Sincerely,



Michael Nicholas
CEO

October 21, 2011

Municipal Securities Rulemaking Board

Re: MSRB Notice 2011-50
Request for Comment on Revised Draft Rule G-43

Gentlemen:

I'm writing this in response to the Request for Comment on the above referenced revised draft rule which outlines rules for both broker's brokers and broker dealers in the transaction of municipal bonds. My inquiry concerns "screening" specified broker dealers wherein, "MSRB notes that such screening may reduce the likelihood that the high bid represent (sic) a fair and reasonable price. Selling dealers should, therefore, be able to demonstrate a reason other than competition ... for directing broker's brokers to screen certain bidders from the receipt of bid-wanteds or offerings."

My question is this: Are there similar rules in place which are designed to protect the public during the lion's share of our activity, i.e., *buying* bonds? During the process wherein a salesperson searches for the most attractive bonds to offer the retail client for purchase, does the MSRB have regulations which afford the client the same sort of protection as G-43 seeks during a sale via the bid-wanted mechanism?

My understanding is that broker dealers frequently inventory municipal bonds, and generally employ an electronic platform through which their bonds are displayed to their internal sales force. Further, these platforms enable a broker dealer to display, on their in-house system, bonds which competing broker dealers advertise on the same platform. Consequently, all bonds advertised on a given platform can be advertised on the systems of all broker dealers which utilize said platform. All things being equal, if these platforms are used properly, the client has access to a substantial universe of bond offerings.

My further understanding is that these platforms enable each broker dealer to screen from their sales force whichever competitor's offerings it chooses. Hence, if broker dealer A and broker dealer B each use the same platform, clients of both A and B have access to both A's and B's offerings, unless either A or B specifically screens the other's bonds from appearing on its internal system. If I'm a client of A and A does not screen B's bonds...and all other available broker dealers' offerings... from its sales force, except in unusual circumstances, I'm being treated fairly. However, if I'm a client of B and B routinely screens competitors' offerings absent "valid business reasons other than competition", the MSRB standard for screening in the bid-wanted process, I'm being shortchanged whenever B happens to screen from my salesperson's view either cheaper identical bonds to B's, or bonds otherwise available which may be generally more attractive or suitable than B's selection. In its capacity working for a

MSRB
October 18, 2011
Page Two

broker dealer, a broker's broker "could not take any action that would work against that dealer's interest to receive advantageous pricing". Shouldn't the broker dealer be held to the same standard in dealing with its client?

Since a broker dealer may not instruct a broker's broker in all but unusual circumstances to "screen" bid wanteds and offerings, shouldn't there be specific rules prohibiting the broker dealer itself from "screening" from its clients competing bonds available on the platform the broker dealer uses, excepting unusual circumstances? Would not such "screening" make the process less transparent and reduce the likelihood that the bonds being shown the buyer reflect the most attractive in the market? Would this not constitute manipulating the market? Is this sort of thing permitted in other markets?

If there are specific regulations in place prohibiting broker dealers from routine, unjustifiable "screening", fine; if not, why not?

Bottom line: Does the MSRB have specific regulations which assure maximum transparency and best execution for the *buyer* similar to those protecting the seller?

Sincerely,

Tom Dolan

Municipal Securities Brokers
111 Town Square Place, Suite 1430
Jersey City, NJ 07310
(201) 217-8115

www.HTDonline.com

November 3, 2011

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

Re: MSRB Notice 2011-50:

Dear Mr. Smith:

Hartfield, Titus & Donnelly, LLC ("HTD") appreciates this opportunity to submit comments on the Municipal Securities Rulemaking Board's ("Board") Notice 2011-50[1] (the "Notice") in which the Board requests comment on revised draft Rule G-43, and associated revised draft amendments to Rules G-8, G-9 regarding municipal securities broker's brokers ("MSBBs") and draft interpretive notice on the obligations of dealers that use the services of broker's brokers. HTD also is participating in the drafting of the comment letter on the revised draft to be submitted by the Securities Industry and Financial Markets Association ("SIFMA") (the "SIFMA Letter"), and supports the views expressed therein.

We would like to take this opportunity to thank the Board for its revision of Draft Rule G-43 and for taking all of the comments received into consideration when making its revisions. HTD feels that this new draft proposal, with a few modifications, will define the responsibilities and methodologies of a broker's broker in municipal securities (MSBB) in the secondary market. This should significantly assist the SEC and FINRA in applying "risk based" principals to future Periodic Compliance Examinations, thus limiting their time for examination by limiting the Rules and Regulations that need to be included in the exam; such as Rules G-22(b), G-25(b) & (c), G-26, and others. It also shows that MSBBs perform an important role by providing liquidity, efficiency, anonymity and information flow for the dealer community and their Customers. With that being said, there are still certain aspects of the proposed rule that need to be considered for revision. The Board will find our concerns in the following paragraphs. They are divided into 3 categories: Offerings; Bid Wanted; and dealing with Customers.

Jersey City Chicago Dallas Oak Lawn Boca Raton San Francisco Atlanta

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[1] MSRB Notice 2011-50 (Sept. 8, 2011).

Mr. Ronald W. Smith
November 3, 2011
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OFFERINGS

We would like to start with our concerns on Offerings and the requirements of Rule G-43, sections (a)(iii), (b)(i), (b)(iv), (b)(v), (c)(i)(F); and, Rule G-8(a)(xxv)(A) and (F). The Offering process is distinctly different from a Bid Wanted auction. In the Offering process, also known as "Situation" brokering, the seller provides a list of securities that they, or their Customers, want to sell and the price at which they would be willing to sell. Many times, there are dealers who have expressed an interest in these or similar securities and a price at which they would be willing to buy. Thus, we have a situation where one dealer would like to sell a security at one price and one or more dealers would like to purchase the security at another price. When the buyer indicates to our broker the price it will pay to purchase the security, our broker will then call the seller of the security and inform them of the price the buyer will pay. At this point, a price negotiation typically occurs and if a mutually acceptable price is agreed upon, including our commission, the TRADE (buy and sell) is executed.

This could be compared to a stock on NASDAQ or the Over-the-Counter Bulletin Board (OTCBB). Sellers show the price and size at which they are willing to sell and buyers show the price and size at which they are willing to buy. NASDAQ displays three levels of information on a stock depending on a person's entitlement. The three Levels are: 1) "best quote" price and round lot size (lowest offer/highest bid); 2) the "best quote" price with actual size by firms (firms not disclosed); and, 3) the full "book". The "book" is all the bids and offerings, price and size, on the security. Quite similarly we may have multiple offers and bids on a very active security and display them to any interested party.

SECTION (a)(iii) - (***Work on Behalf of the Seller***) - Offerings are displayed, discussed and negotiated in a manner similar to an Over-the-Counter stock. An MSBB works for either the seller or buyer in the negotiation, depending on which side initiates the negotiation. Many times there are multiple buyers and multiple sellers making markets in the same security. Thus, the MSBBs activity is not consistent with the requirements of section (a)(iii), i.e., to only work for the seller unless agreed to otherwise. We work for either side depending upon the circumstances. We suggest restricting this section to apply only to Bid Wanteds.

SECTION (b)(i) - (***Wide Distribution***) - We distribute lists of Offerings through our electronic platform, HTDonline.com, and our network of regional offices via telephonic communications. Through our knowledge, which is gained from experience, and our historical information, we telephonically contact dealers with potential interest. This does not necessarily include the underwriter of the issue. Since unlike Bid Wanteds which are usually given to one MSBB, Offerings are displayed by dealers on many systems and through many MSBBs. Thus the requirement for widely disseminating an Offering is not necessary. Also, unlike Bid Wanteds where we have an obligation to find the buyer, there is no such obligation for an Offering. If any such an obligation does exist, it is with the seller. We suggest restricting this section to apply only to Bid Wanteds.

SECTION (b)(iv) (previously Rule G-43(c)(iv)) - (***Information to Bidders***) - Because municipal Offerings are so much like Over-the-Counter stock "offerings", they are traded through negotiation rather than an auction. As stated above, NASDAQ displays three levels of information on a stock depending on a person's entitlement. In these Levels, the "book" may be seen on an issue. Therefore, all offers and all bids, with size, may be seen. The same should continue to apply to municipal Offerings. Bidders need to know if other Offerings exist (the depth on the sell side) and sellers need to know the other bids that exist (the "depth" on the buy side). Currently, on our website, we have a page just for this purpose. It is called our "Markets" page and a copy of one is attached. We suggest restricting this section to apply only to Bid Wanteds.

SECTION (b)(v) - (***Bidding Deadline***) - Considering current industry practice covered in all the discussions above, it can be seen that there are no time limits on Offerings. The negotiations may continue all day and into other days. It is a function of the market. This section should apply only to Bid Wanteds and not to Offerings.

SECTION (c)(i)(F) - (***Offer and Bid Price Disclosure***) – Again, considering all the above discussions, we hope that the conclusion can be drawn that offer and bid information on Offerings should be made available to interested parties throughout the negotiation process. Consequently, the restrictions of this section should only be applicable to Bid Wanteds.

Rule G-8(a)(xxv)(A) - (***Time of Receipt of Offer***) – Unlike in the NASDAQ market, the preponderance of negotiations on municipal Offerings are performed through "voice brokering". Generally, the only technology in voice brokering is the telephone. Sometimes a broker may have a buyer on one phone and the seller on another. During the ensuing conversations, both the bid and offer price may change many times. It is practically impossible to record these fast multiple changes. In current industry practice, Offerings are generally provided to an MSBB at the beginning of the trading day. Thus we do know the time when an Offering size and price are first given to us and both are recorded in our system. Subsequently, whenever we update an Offering for display in our system, we also record the time, size and price. Our compliance with this Rule would not interfere with industry practice if the time and price record was limited to when we first received the Offering, it is updated for display or distribution, and we were restricted to displaying the offering as it was given to us, or updated, by the seller.

Rule G-8(a)(xxv)(F) - (***Reason for Offering Change***) – As stated in our discussion on Rule G-8(a)(xxv)(A) Offerings are negotiated primarily through voice brokering and the price changes may be fast pace. This could also happen on NASDAQ stocks when negotiations are taking place over the phone and the final price change is posted only when negotiations are completed. In the negotiation the buyer or seller would only change their price for the purpose of executing a trade. At other times, particularly in the morning, sellers have many reasons for changing their Offering price and it is confidential to them. Their reasoning does not change their responsibility for the Offering being bona fide nor have any bearing on the operation of the secondary market or our displaying the Offering as they gave it to us. In Bid Wanteds, recording bid price changes is practical because it is a much slower paced process and bids are recorded by the MSBB when received.

In addition, there are instances where electronically displayed Offerings are priced based on a spread to U.S. Treasury securities. Thus, the Offering price is continually changing. As the U.S. Treasury prices change the Offering prices will change as well.

Also, a dealer might change the price on an Offering throughout the course of the day because some or all of the bonds trade, the market changes, additional bonds were purchased, different bonds were added to inventory and they want to liquidate the Offering, etc.. All of this is dealer determined and often we are not informed of the price changes or the Offering's status until the next day. When we are informed, the dealer will not necessarily want us to know their reasoning.

We suggest that if any record is to be kept on Offerings, in addition to the trader and broker involved, it is the time when we record or update the Offering for distribution, not during negotiation and that there be no requirement to record the reason.

Mr. Ronald W. Smith
November 3, 2011
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BID WANTED

SECTION (b)(iv) - (***Comment to Bidder on Where They Stand***) - We would like to reiterate and state for the record that we agree with the proposed Rule's restriction on giving preferential information to bidders such as "last looks", directions on what to bid, suggestions on lowering a bid or raising a bid.

However, we feel a bidder is entitled to know if their bid is currently the high bid ("Comment") at anytime and not just when the bidding has ended. This will allow bidders, who do not have the high bid, to deploy their capital elsewhere and/or place bids on other items. The dealer community has always felt this information is important to their efficient use of capital. In addition, this assists in improving liquidity in the market. Current industry practice is to give a bidder "Comment" on whether or not their bid is currently the high bid. They are not told their position among the bids or how much they are away from the high bid. Once we do this, they are not allowed to modify their bid or place another bid on the item. Note: this is essentially their deadline for their bidding on this item.

Thus, we suggest that MSBBs be allowed to give a bidder information on whether their bid is being used and subsequently prohibit them from any further bidding on the item.

SECTION (b)(v) - (***Bidding Deadline***) - During the bid wanted process for "sharp time" there is a deadline by which all bids must be received. That is the "sharp" time. For an "around time" item, the current Draft suggests the deadline to be the time a bid is "Put Up" to the seller. For purposes of this Rule, there are current industry practices which would suggest that a better time for the "around time" item's bidding deadline would be when the seller gives the final instructions to an MSBB to sell the bonds, i.e., when the bonds are marked "For Sale".

The reason for this is the seller may come to us at any time during the bidding process and ask us for the current high bid. This may only be for information purposes for them or their customer and not necessarily for determining if the bonds are for sale at that bid. Anytime we tell a seller the high bid, we mark the bid as "Put Up", even though the seller is still accepting bids. Another instance is when the seller may tell us that the bonds are for sale at the "Put Up" bid or higher. Here the seller is notifying us that the bonds will trade and to get a higher bid if possible. We will still continue to work the item until the seller directs us otherwise. Thus, again we are still taking bids after the "Put Up" time.

When a seller clearly indicates that we are to sell the bonds, we mark them "For Sale" and go to the high bidder and sell them the bonds. Thus, we suggest the deadline for accepting bids on an "around time" item be when the bonds are marked "FOR SALE".

SECTION (b)(vi) - (***Informing Seller of any Bid Change***) – We agree that receiving permission from a the seller in certain cases to change a bid is appropriate. However, there is no benefit to the market to inform the seller of bid changes in all events and in some instances it only delays the process. In our system, HTDonline.com, not only are bids changed by our brokers (at a bidder's direction) but a bidder can change their own bid. Rather than have it be a requirement to always inform the seller of bid changes, the requirement should only apply to an MSBB who falls under section (c)(i)(I) of the Rule. For an MSBB using Section. (b)(vi), it is already known by the seller and bidders that bids may be changed if they fall outside certain parameters.

Therefore we suggest that an MSBB who does not conduct Bid Wanteds as provided in Section (b) be required to notify sellers of bid changes at all times. For MSBBs who comply with Section (b), they should only be required to inform a seller if the seller requests the information. This will assist in keeping efficiency in the market.

SECTION (c)(i)(F) - (***When a Bid Wanted is Completed***) - We also suggest that a definition of when a Bid Wanted is "completed" be any of the following: 1) the item traded, i.e., the sell is executed and the buy is executed; 2) the item is "Traded Away" (it was traded by the seller to another dealer or customer); and 3) the item is identified as "No Trade" (we are told by the seller that the item will not trade).

CUSTOMERS

SECTION (c)(i)(G) - (***Disclosing if a Customer is a Counterparty***) – We provide to our counterparties a statement of who we are and disclose to them that the counterparties to our trades are dealers and SMMPs. Thus, we disclose to sellers and bidders that we have Customers, albeit SMMPs. We feel disclosure of this fact is acceptable, reasonable and sufficient.

However, we are at a loss in understanding the benefit provided to the secondary market by the disclosure on a transaction-by-transaction basis of a Customer as a counterparty. If the disclosure is to be made after the trade is completed, then it is just for information purposes and the counterparty can be identified as a Customer within 15 minutes of execution through the MSRB's RTTM trade information.

If the disclosure is to be made prior to trade, it implies there is some reason a dealer would not want a Customer on the other side of our trade and could use this as a reason not to sell. However, dealers buy and sell to Customers all the time. If the concern is that the Customer might renege on the trade (because it is not required to follow MSRB Rules), this is of no more concern than if a dealer reneges. Yes, they must follow the Rules; however, they may interpret the Rules in such a way that may justify their stepping away from a trade. It has happened many times among dealers.

By definition and obligation, an MSBB stays in a trade between a buyer and seller to protect both sides of a trade, not only their anonymity, but their credit exposure. Neither side has to worry about the capitalization of the other. Once a dealer has reviewed the MSBB's financials and determined to broker with that MSBB, trading is no longer a credit issue. We act as riskless principal in all our transactions, and as principal our credit does not fluctuate based on our counterparties nor does "counterparty risk" change based upon who we broker with. The only credit exposure our counterparties face is us, not the other counterparty to the trade.

When dealing with Customers, we are required to follow the same Net Capital Rule as all dealers, and we follow the same formula they do in determining our Minimum Net Capital. Additionally, we have the same requirements as dealers for the DTCC Clearing Fund Deposits for clearance and settlement purposes. DTCC makes no distinction between our dealing with a Customer or another dealer. They require no additional Clearing Fund Deposit whether we broker with a Customer or a dealer. In addition, the current high percentage of netting of municipal transactions significantly reduces counterparty risk, because DTCC guaranties the transactions.

We provide anonymity in our brokering services and that is a very important function in our service. Part of the anonymity is the full protection of the identity of the counterparties. Just as a dealer would not want us to disclose any information on their identity, the same should apply to Customers. As a matter of fact, the Customers may be using an MSBB just for that purpose. This requirement for disclosure may even be an impediment to the market.

Mr. Ronald W. Smith
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We ask that generally disclosing that we broker with Customers would be a sufficient way to inform our clients instead of telling them on a transaction-by-transaction basis. This general statement would help us in keeping anonymity in our brokering services while informing our clients that we also broker with Sophisticated Municipal Market Professional.

We thank the Board for giving us this opportunity to share our views on the Proposed Rule G-43 and if we could be of further assistance please do not hesitate to contact us.

Very truly yours,

Mark J. Epstein
President & CEO

Attachment

ATTACHMENT

"Markets"

HTDonline Offering information - Windows Internet Explorer

http://192.168.100.55/htdonline/secure/ODetail/frames.html?detail/htdonline/cgi-bin/OModifyTrades.csh?rows=1&

Print | Refresh | Close | SIFMA | History | Calculator | New Bid | New Offer | Submit

SETTLE
11/09/2011

010869EC5
MDY BAA2 / BAA2
S&P A- / A-
FITCH BBB+ / BBB+
SMITH'S NR
DTD 05/06/2004

ALAMEDA CORRIDOR TRANSN AUTH CA RFDG-SUB-B [AMBAC] [TXBL] [N/C] [B/E] [OY: 5.170]

0.000 10/01/2012
ST CA
TYPE REV
INSUR AMBAC
Prospectus

UND: GOLDMAN, SACHS & CO.

ISSUE: $686,024 MATURITY: $21,721

	AMOUNT	MINIMUM	INCREMENT	LEAVE	YIELD	CONC	PRICE
OFFER	2000	5	5	0	4.112		96.425

STANDARD & POOR'S Price: 95.211 Yield: 5.460

THOMSON REUTERS EVALUATION Price: 93.892 Yield: 5.798

Bloomberg (BVAL) Price: 94.776 Yield: 4.925 Score: 2

BID						OFFER					
AMT	YIELD	CONC	PRICE	SPREAD	S/D	AMT	YIELD	CONC	PRICE	SPREAD	S/D
500 ▲	4.319		96.250	SA	11/09	2000 ▲	4.112		96.425	SA	11/09
250 ▲	4.468		96.125	SA	11/09	5000 ▲	3.435		97.000	SA	11/09
						3000	2.271		98.000	SA	11/09

Internet | Protected Mode: On 100%

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A division of Knight Execution & Clearing Services LLC
3424 Peachtree Road NE
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Atlanta, Georgia 30306
Tel 877.392.8258
Fax 404.736.2405
www.knight.com

November 3, 2011

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: **MSRB Notice 2011-50: Request for Comment on Revised Draft Rule G-43 (On Broker's Brokers), Associated Revised Draft Amendments to Rules G-8 (On Books and Records) and Rule G-9 (On Preservation of Records), and Draft Interpretive Notice on the Obligations of Dealers That Use the Services of Broker's Brokers**

Dear Ms. Henry:

Knight BondPoint[1] ("KBP"or "the KBP Platform") welcomes the opportunity to comment on Municipal Securities Rulemaking Board ("MSRB") Notice 2011-50, in which the MSRB requests comments on revisions to draft Rule G-43, and related revisions to draft amendments to Rule G-8 and Rule G-9 and on a draft interpretive notice concerning the obligations of brokers, dealers and municipal securities dealers ("dealers") that use the services of broker's brokers.

In MSRB Notice 2011-50, the MSRB states that the definition of a broker's broker is a functional definition that "focuses on the key function of a broker's broker - effecting transactions in municipal securities on behalf of other dealers." It is the view of KBP that this definition is too broad in the context of draft Rule G-43, in that it does not recognize key differences between Alternative Trading Systems ("ATS") which operate in an automated, systematic and non-discretionary manner and more traditional voice broker's brokers. KBP believes that narrowing the definition is appropriate, because the types of abusive behaviors which are the impetus for the MSRB's rule proposal are highly unlikely to occur in connection with transactions executed on an ATS that operates in an automated, systematic and non-discretionary manner.

[1] Knight BondPoint is a division of Knight Execution & Clearing Services, LLC, a subsidiary of Knight Capital Group, Inc ("Knight"). Knight, through its subsidiaries, is a major liquidity center for foreign and domestic equities, fixed income securities, and currencies. Each day, Knight executes millions of trades across a wide range of securities. Knight's clients include more than 4,000 broker-dealers and institutional clients. Currently, Knight employs more than 1,300 people worldwide. For more information, please visit: www.knight.com.

KBP suggests that MSRB revise draft Rule G-43 to recognize that an ATS which operates in an automated, systematic and non-discretionary manner, unlike traditional broker's brokers, do not intermediate transactions in the manner contemplated in draft Rule G-43.

The Knight BondPoint ATS ("the KBP ATS"), for example, furnishes subscribers with an automated and transparent execution platform on which those subscribers may electronically conduct bid-wanted auctions and, or disseminate their bids and offers broadly to other subscribers and electronically interact with such bids and offers to consummate transactions. As a result, the KBP ATS, and other similarly situated ATSs, should not be considered a broker's broker for purposes of this proposed rule.

It is the understanding of KBP, that in the case of a traditional broker's broker, a dealer seeking to purchase or sell securities specifically chooses to utilize the services of a broker's broker because that dealer has an expectation the broker's broker has particular knowledge of the identities of other dealers that are likely to have an interest in a transaction and particular skills in negotiating within the relevant market. In making this choice, the dealer expects that the broker's broker will utilize that knowledge, together with its expertise and discretion to produce a transaction that represents the best execution given the prevailing market conditions. Broker's brokers exercise discretion and employ anonymity for both the buyer and seller in a bids wanted transaction. Given the level of discretion exercised to provide this service and meet the expectation of the parties involved, traditional broker's brokers charge higher fees for their services as compared to, for example, the fees incurred by subscribers for utilizing an ATS to conduct bids wanted activities.

In contrast, for example, ATS subscribers expect that an ATS operator such as KBP will act in a neutral, unbiased manner (much like an exchange), establishing consistency and setting non-discretionary rules for interaction on the platform by acting as a communications conduit between subscribers of the platform. This eliminates selective communication and the opportunity to introduce information asymmetries into the bids wanted process, e.g., color or standing of a subscriber's bid in comparison to other bids received on a particular bids wanted request.

By way of illustration, bids wanted requests on the KBP Platform are electronically broadcast and all prices received from bidders are routed to the bids wanted requestor, free of any commissions, or mark-downs, and on a disclosed (rather than anonymous) basis, providing greater transparency to the bids wanted submitter. In short, the price provided by one subscriber is transmitted directly to another subscriber. Subscribers are also offered the ability to define their parameters for the auctions they wish to conduct, such as the time allotted for bids wanted responses to be received from bidders. Therefore, the bids wanted requestor can choose to accept a bid based on the bids received directly from other subscribers of the KBP ATS. Once the transaction is consummated, the buyer is provided with appropriate cover bid information. No manual or human intervention occurs during the auction and KBP only intermediates a

limited number of transactions for the purposes of facilitating clearing and settlement of the transaction post-execution.

By conducting the bids wanted auction in this manner, the KBP platform promotes and maintains consistency on each and every bids wanted submission and the response to those submissions taking place on the platform. Furthermore, by establishing a non-discretionary, rules based system, KBP believes that an ATS helps protect the retail investor from the very behavior MSRB is determined to abrogate.

KBP provides transparency to subscribers involved in the auction process by providing access to pertinent municipal market data such as MSRB trade history information, as well as access to bid and offer information for similar bonds to aid their decision making for placing bids and evaluating the quality of bids received. In addition, subscribers utilize multiple ATS platforms to obtain fair pricing for their clients by submitting the same bids wanted requests across multiple ATS venues to ensure that a broad, diverse set of potential bidders are reached. Given these differences in business models, executing transactions via an ATS is typically a lower cost alternative to more traditional broker's brokers. These cost savings can be further passed down to the retail investor.

In view of the foregoing, we respectfully request that the MSRB revise its draft definition of a broker's broker to clarify that ATS operators whose platforms operate in a manner in which subscribers electronically disseminate their bids and offers broadly to other subscribers and electronically interact with such bids and offers to consummate transactions, and which offer subscribers an automated, systematic and non-discretionary platform to conduct their bids wanted auctions - are not broker's broker for purposes of the this rule.

Thank you for providing us with the opportunity to comment on this rule proposal. We would welcome the opportunity to discuss our comments further.

Respectively submitted,

Marshall Nicholson
Managing Director, Knight BondPoint

cc: Leonard J. Amoruso, General Counsel, Knight Capital Group

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
Alexandria , Va. 22314

November 1, 2011

Regional Brokers, Inc. is pleased to have the opportunity to comment on Revised Draft Rule G-43.

RBI appreciates the work of the MSRB in developing rules that bring standardization to the municipal bond industry and a level playing field to the marketplace. RBI also appreciates the willingness that the MSRB has shown in modifying certain provisions of the original draft in response to the suggestions of various members of the industry during the first comment period.

RBI has in place policies and procedures that fulfill most if not all of the proposed new Rule G-43, and we look forward to working with the MSRB to finalize this new rule and implement it in our business model.

In this response, RBI will comment on Rule G-43 Section (b)(v) which mandates the imposition of a bid "deadline" on all bids wanteds, regarding when bids may be accepted. RBI will also comment on Section (b)(iv), which, if (b)(v) is modified from its current wording, will also need to be modified. RBI will also comment on Section (a)(iii), regarding whether a broker's broker should be presumed to act for or on behalf of "the seller in a bid wanted or offering...", and the corresponding section of G-8 pertaining to certain "Books and Records" requirements regarding offerings.

Our comments regarding bid wanted auctions will refer only to "around time" auctions, and not to auctions that are run with "sharp time" deadlines.

REGARDING (b)(v)

The Rule states:

(b)(v) Notwithstanding subsection (a)(ii) of this rule, each bid wanted or offering must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may either be a precise (of "sharp") deadline or an "around time" deadline that ends when the high bid has been provided (or "put up") to the seller.

RBI COMMENT:

As background to our comments, RBI wishes to point out that a major focus in the bond market today is the treatment received by the retail customer when it comes to selling their bonds. RBI believes that we, as broker's brokers, should therefore do nothing that would keep the retail customer from being able to

receive the highest bid available in the market place at that time. RBI believes that the imposition of a deadline could drastically deny the retail customer from achieving this.

The MSRB has pointed out, in its own comments, that it is perhaps more important to take more time to get the right bid than to rush; it has stated in its MSRB Notice 2011-18 (February 24, 2011) that "the MSRB believes that most retail customers would prefer a better price to a speedy trade". RBI agrees with this completely- and believes that the imposition of an arbitrary "deadline" does the opposite. While RBI understands that the MSRB is attempting to deter non-compliant behavior, it seems to us that the penalty to the retail customer may be greater than it need be, especially if there are other ways to ensure that such non-compliant behavior can be curtailed.

Currently, under the industry-accepted operation of "around time" bid wanteds, there is not a time when a "deadline" for accepting bids has expired. RBI is aware that the MSRB would, under (b)(v) of the Revised Rule G-43, impose a deadline for the acceptance of bids for all bid-wanteds. (b)(v), as written, would mandate that no bids could be accepted after a bid has been "put up" to the seller. RBI believes that any deadline that is imposed upon its ability to accept bids, especially on odd-lot bid wanted items that are being advertised as an "around time", will be vastly detrimental to the ability of broker's brokers to provide the best price, and therefore the best execution, for the retail seller who is trying to get the best price for their municipal bonds.

The broker's broker is at the mercy of the bidder when it comes to the time that a bidder chooses to respond with a bid. Traders at the bidding shops are extremely busy; odd lots are not always their first priority. Also, these traders are often under pressure to bid on the items shown to them by their own financial advisors, and so response to requests from "the street", that is, the bids requested by the broker's broker, is often delayed. The broker's broker can call, again and again, to request a bid, but the trader will call back only when ready. Often, this bid comes back long after other, not as competitive, bids have been reported to the seller.

One of the most important duties of a broker's broker is to know which traders are the best potential bidders on certain bond issues. If the broker's broker is forbidden, by this new rule, to reach these potential best bidders (because the seller has requested an indication of what bids have already been returned on the item, in order to gauge whether the bonds even have a chance to trade, and has therefore, in response to that request, been given a bid, and in doing so, created the "deadline"), then this very important function of the broker's broker will have been eliminated.

RBI would also comment, regarding this new rule, that the MSRB also has not provided guidelines regarding the procedures that should be taken when late, high bids are returned to the broker's broker that cannot be reported to the seller because of this "deadline". If a broker's broker contacts a potential bidder, and then receives a high "late" bid from that bidder before the bonds are marked for sale, what is the broker's broker to do with the bid? Does the MSRB recommend that the bid be reported, even though it can not be used? And, knowing that there is a better bid, should the broker's broker end the auction and begin a new auction on the item, so that the high bid can be used? It would appear to be fraudulent on the part of the broker's broker if they were not to alert the seller that there is a better bid

in the marketplace than the one at which they have been asked to execute a trade. Also, since the broker's broker is now aware of a better price for the bonds in the market, can the broker's broker then immediately re-trade the bonds from the new owner of the bonds (after the first trade) at a price that should have been awarded to the original seller? Finally, will broker's brokers be accused of accepting a quick bid from a "favored" bidder, and putting up that bid, thereby locking out the competition?

It should be pointed out that the practice of "rounding up" bids, or of posting that "bonds are going to trade", is an accepted practice in the industry, and one which all traders are aware of. There have been no complaints that we are aware of regarding RBI's current business model of rounding up bids, and in fact, RBI has on record many requests from traders requesting that they be rounded up if the bonds are marked for sale. Since this is an industry practice, condoned (and encouraged) by the people that the MSRB is trying to protect, it would appear that there is no need for this imposition of a rule. Clearly, no one is currently being hurt, but the retail customer could be.

Overall, RBI understands that the MSRB is attempting to prevent non-compliant behavior in the marketplace by keeping broker's broker from helping out certain counterparties by coaching them or backing them off or giving them "last looks". The use of the term "last look" , with its inference that one bidder is being given advantageous information, is not appropriate in regard to RBI's current practice of rounding up on items that are going to trade, or of contacting potential bidders that have been historically strong bidders for certain bond issues.

If the MSRB determines that it will impose a deadline on "around time" bid wanted items, RBI would propose that instead of the bid deadline ending at the time that a bid is "put up" to the seller, that the bid deadline should end when the bonds are marked "for sale". This will allow all bidders more time to respond with their bids. It will also enable the broker's broker to end the auction at the time that the bonds actually trade, (meaning that the broker's broker has, at least, found a bid for the bonds that is high enough to cause a sale).

If the MSRB imposes this deadline, RBI would like to know the methods by which the MSRB will ensure that broker's brokers fulfill the obligation of this rule, making certain that no firm attempts to circumvent the rule by "sitting on" the notification of the seller that the bonds are "for sale". RBI believes that it will be extremely important that the Broker/Dealer community understands that once they mark an item for sale, that they may not accept any additional bids on their item, and that doing so will be in violation of this rule.

REGARDING SECTION (b) (iv)

The Rule states:

A broker's broker may not give preferential information to bidders in bid-wanteds or offerings, including where they currently stand in the bidding process (including "last looks", directions to a

specific bidder that it should "review" its bid or that its bid is "sticking out") provided, however, that after the deadline for bids has passed, bidders may be informed whether their bids are the high bids ("being used") in the bid-wanteds or offerings.

RBI COMMENT:

This comment would be appropriate only if the MSRB provides relief from Section (b)(v), in that, if the MSRB agrees that there should not be a "deadline" imposed, that comments to bidders could be given as follows:

Until the end of the auction (which RBI has defined in its own Written Supervisory Procedures, and which other MSBBs could define in their own WSPs), the only comment that can be given to a bidder is that the bidder is either "currently being used" on an item (that is, currently the high bid at the time the comment is given) or "not used".

After the auction ends, bidders may be given all information regarding the item, including bid levels and the number of bids.

REGARDING SECTION (a)(iii)

The Rule states:

A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted or offering, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted or offering.

RBI COMMENT

While RBI agrees that the broker's broker represents the seller in the operation of a bid-wanted auction, it does not agree that the broker's broker will always work for the seller in an "offering". During the course of RBI's business day, when dealing with "offerings", we represent the bidder and seller equally. Getting permission in writing for each and every offering situation is un-necessary and could negatively affect liquidity. Therefore, RBI believes that the rule should be revised to indicate the difference between "bid wanted" and "offering"

REGARDING RULE G-8

The Rule States:

(a)(i)(xxv) A broker's broker shall maintain the following records:

(A) all bids to purchase municipal securities, and offers to sell municipal securities, that it receives, together with the time of receipt

(F) for all changed offers, the full name of the person at the seller firm that authorized the change; the reason given for the change in the offer price; and the full name of the person at the broker's broker at whose direction the change was made:

RBI COMMENT

Subparagraph (xxv)(A) requires that all bids to purchase and offers to sell municipal securities, and their time of receipt, be recorded and maintained. RBI agrees that these requirements are reasonable for bid-wanteds, but we do not believe that they are workable or necessary for offerings. Negotiated offerings involve many back and forth communications between a potential buyer and seller, not always resulting in a trade. Applying this requirement would impose a significant recordkeeping burden on broker's brokers while adding no significant compliance benefits.

Subparagraph (xxv)(F) requires that, for all changed offers in an offering, MSBBs make a record of "the full name of the person at the seller firm that authorized the change; the reason given for the change in offering price; and the full name of the person at the [MSBB] at those direction the change was made[.]" As we have stated in the previous paragraph, the attempt to document in writing the back and forth process of an offering, with potential changes to the offering price in each offering, is unworkable. In addition, many offerings may be made with the price tied to an index, which can result in constantly changing prices.

In conclusion, RBI again would like to express its thanks to the MSRB for allowing us to offer our opinions regarding this important new rule. We look forward to working with the MSRB and others in the municipal bond industry to help with its successful implementation.

Sincerely,

Joseph A. Hemphill III
President
Regional Brokers, Inc.

H. Deane Armstrong
CCO
Regional Brokers, Inc.

Invested in America

November 2, 2011

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

Re: MSRB Notice 2011-50: Request for Comment on MSRB Draft Rule G-43 and Associated Amendments to Rules G-8, G-9, and G-18, and Draft Interpretive Notice on the Obligations of Dealers that use the Services of Broker's Brokers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2011-50[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB requests comment on draft Rule G-43, and associated amendments to Rules G-8, G-9, and G-18 (the "Proposed Rule"), and the Draft Notice to Dealers that use the Services of Broker's Brokers (the "Draft Notice") regarding municipal securities broker's brokers ("MSBBs"). The concepts embodied in the Proposed Rule were first proposed by the MSRB in September 2010[3] (the "Proposed Guidance"), and were later re-proposed in February 2011[4] (the "Initial Rule Proposal").

SIFMA supports effective and efficient regulation of the municipal securities markets that helps to aid market liquidity in a manner consistent with customer protection. We are gratified that the Proposed Rule has been significantly

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1 The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

2 MSRB Notice 2011-50 (Sept. 8, 2011).

3 MSRB Notice 2010-35 (Sept. 9, 2010).

4 MSRB Notice 2011-18 (Feb. 24, 2011).

modified from the Initial Rule Proposal. The changes reflected in the Proposed Rule address many of the most problematic aspects of the Proposed Guidance and Initial Rule Proposal, striking a much better balance between the important goals of customer protection and market liquidity. That being said, we believe that there are certain aspects of the Proposed Rule that the MSRB should consider revising, in order to ensure that the final rule adopted will be as useful and effective as possible.

I. Revisions to the Proposed Rule

The following comments set forth our principal proposed revisions to the Proposed Rule. In order to provide context to our suggestions below, we note that the municipal securities secondary market is characterized by an extremely large number of issuers, many of whom issue securities on an infrequent basis. On any given day, a retail dealer active in the market can have between 2,000 to 5,000 items to potentially bid upon. It will therefore review, and may eventually bid upon hundreds of these items. That same retail dealer also could have a number of items out for bid, to which it will need to devote additional attention. Therefore, we believe that any impediments to trading in what is already a labor-intensive market must be carefully reviewed to ensure that the burdens to liquidity are justified.

A. G-43(a)

We request that paragraph (a)(iii) be both modified and clarified. First, we believe that the reference to offerings should be removed, because in the conduct of offerings, there is not, in practice, a presumption that the MSBB is working for the seller of bonds. While we do not have specific statistics on this point, our informal fact gathering leads us to believe that MSBBs represent buyers in more than half of the offerings in which they participate. We agree that the presumption is accurate in the case of bid-wanteds.

We also request that the requirement to obtain prior written authorization from buyers and sellers should be clarified to reflect that the authorization is not intended to be required on a transaction-by-transaction basis, and that it may be included in a customer agreement or similar terms-of-use agreement for electronic systems. If a transaction-by-transaction scheme was envisioned, we strongly urge the MSRB to reconsider such an approach, as obtaining written consents in this manner will prove to be unworkable in practice.

B. G-43(b)

Paragraph G-43(b) should apply only to bid-wanteds, and not to offerings. In a bid-wanted, the MSBB is conducting an auction, and the bidders and sellers expect the MSBB to play the role of auctioneer. In that context, and subject to our

specific comments set forth below, G-43(b) may, as a practical matter, be applied to bid-wanteds. In offerings, on the other hand, the MSBB is working on behalf of a party that has indicated the price it is seeking, and the MSBB is expected to try to broker a transaction to achieve that price. For example, if a seller offers an item with a price of 95 and the MSBB contacts one purchaser who is willing to pay 95, that transaction would be executed.

In the transaction described above, the MSBB would not have complied with subparagraphs (i), (ii) and (v). The MSBB would have complied with subparagraphs (iii), (iv), (vii) and (viii), but as we argue below, these are really anti-fraud provisions with which all transactions must comply, to the extent applicable to the specific facts of a transaction. The remaining subparagraphs apply by their terms only to bid-wanteds. We do not see the benefit of including offerings in a rule, even one designed as a safe harbor, when even in their simplest form they do not comply with the rule's terms.

We noted above that paragraph (b) is intended to act as a safe harbor,[5] so that a failure to adhere to it would not, in and of itself, constitute a rule violation. However, paragraph (b) includes both safe harbor provisions and anti-fraud provisions for which the failure to adhere likely would constitute violations of Rule G-17. In the interest of clarity, we request that subparagraphs (iii), (iv), (vii) and (viii) be removed from paragraph (b), and either be published as interpretations under Rule G-17, or moved to paragraph (c) of Rule G-43.

Subparagraph (iv) prohibits MSBBs from giving preferential treatment to bidders during a bid-wanted, and we agree that such practices should be prohibited. However, we reiterate our belief that letting a bidder know whether their bid is being used should not be included within this prohibition. We believe that the benefit to market liquidity of letting bidders know whether they are being used – without any additional information, and on the condition that they may not change their bid – allows bidders to more effectively deploy their capital throughout the trading day, to the benefit of all market participants. We do not believe that this information should be restricted until the time for receiving bids has passed.

We agree that bid-wanteds must have identifiable deadlines, as set forth in subparagraph (v), but we do not believe that the deadline for "around time" bid-wanteds should be based on when the bids are "put up" to the seller. Rather, the deadline for "around time" bid-wanteds should be defined to occur at the time the seller informs the MSBB that the bonds should be sold to the high bidder (when the

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[5] Notice, p. 2.

bonds are "marked for sale"), or when the seller informs the MSBB that the bonds will not be sold in that bid-wanted (that the bonds "will not trade"). If neither of these events occurs in an "around time" bid-wanted, it should be deemed to terminate at the end of the trading day. While this appears to be a subtle distinction, it has significant practical effect on not only industry members but on the market as a whole. In a bid-wanted that has been set with an "around time" deadline, the seller should have the ability to decide to leave an auction open to see if additional bids will be received. We also do not believe that using "marked for sale" as the cutoff time disadvantages bidders, as they are aware at the start of the bid-wanted that there is not a specific time when the auction will close. The rule as currently drafted would ultimately have a detrimental effect on liquidity, especially for retail customers of the broker-dealer.

C. G-43(c)

We do not believe that subparagraph (i)(F) should apply to offerings. Imposing these restrictions on communications between the parties involved in an offering is antithetical to the very purpose of an offering. For example, if a seller puts an item out for an offering at a price of 98, a bidder contacted by the MSBB may respond that it is willing to buy at 97.50. Both the buyer and seller fully expect that the MSBB will convey this information to the seller, so that the seller can decide to sell or not, or to counter at a price between 97.50 and 98. This communication process would continue until the parties determine if they can reach a mutually satisfactory price. Thus, prohibitions on price communication cannot work in offerings.
We also believe that subparagraph (i)(F) should be revised to clarify at what point a transaction has been completed. We believe that the appropriate point in time for the purposes of this provision should be the time at which both the purchase and sale sides of the transaction have been executed. It is at this point that the MSBB would know with certainty that a sale has been completed.

D. G-8(a)

Subparagraph (xxv)(A) requires that all bids to purchase and offers to sell municipal securities, and their time of receipt, be recorded and maintained. While we agree these requirements are reasonable for bid-wanteds, we do not believe that they are workable or necessary for offerings. As just described, a negotiated offering could have multiple iterations of communications between buyer and seller. And many of these negotiations may not even lead to an executed transaction. Applying this requirement will impose a significant recordkeeping burden on MSBBs, and we respectfully submit that it is not warranted. If this subparagraph is intended to apply only to the initial time an offering is given to an MSBB, we ask that this point be clarified.

Subparagraph (xxv)(F) requires that, for all changed offers in an offering, MSBBs make a record of "the full name of the person at the seller firm that authorized the change; the reason given for the change in offering price; and the full name of the person at the [MSBB] at those direction the change was made[.]" These requirements are analogous to the subparagraph (xxv)(E), which apply to changed bids in bid-wanteds. For the reasons described in the first paragraph of the immediately preceding section, applying these requirements to offerings is impractical. Trying to document in writing the back-and-forth process of an offering, with many potential changes to the offering price in each offering, is unworkable. In addition, many offerings may be made with the price tied to an index, which can result in constantly changing prices.

II. Draft Notice to Dealers that use the Services of Broker's Brokers

We believe that the Draft Notice will, in concept, be helpful to the dealer community, although we are aware that some dealers may have concerns about some of its specific aspects. Because of this, although we are only commenting on one specific aspect of the Draft Notice, we request that this not be taken as an endorsement of the remainder of its content.

We believe that the restrictions on the control of bid-wanteds by the selling dealers are unreasonably restrictive. As currently drafted, this section of the Draft Notice gives the impression that the only acceptable reasons for restricting the dissemination of bid-wanteds are for credit, legal or regulatory concerns. We believe that there are other acceptable business and trading concerns – separate and apart from competitive concerns – that would support such restrictions. For example, a selling dealer may instruct an MSBB to exclude a certain dealer from a bid-wanted because if the second dealer was included, it would be able to ascertain the identity of the customer selling the bonds, to the detriment of the customer. We believe that an appropriate standard would be to allow selling dealers discretion to control this aspect of bid-wanted so long as they could demonstrate that any restrictions imposed were intended to benefit the selling customer, and were not intended to solely benefit the selling dealer.

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
Page 6 of 6

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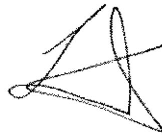
We wish to thank the MSRB and its staff for their work in developing the Proposed Rule and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposed Rule. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly Hotchkiss, Executive Director
Peg Henry, General Counsel, Market Regulation
Ernesto A. Lanza, Deputy Executive Director and Chief Legal Officer

November 3, 2011

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria VA 22314

Comments in Regard to Notice 2011-50

Dear Ms. Henry:

TMC Bonds L.L.C. ("TMC"), formerly known as TheMuniCenter, is encouraged by the progress made with the revised Draft Rule G-43 and pleased to respond to the Municipal Securities Rulemaking Board's ("MSRB") request for comment. Most important, we are encouraged by the path the Board has taken in understanding the role of a broker's broker and removing the obligation for determining fair pricing. While the new revisions provide a means for a safe harbor, there is still a great deal of friction that will result from the current proposal which will ultimately lead to loss of efficiency and greater transaction costs for market participants.

While the MSRB is focused on both addressing a number of the non-competitive behaviors of the traditional voice bids wanted process and seeking to insure better bid levels, the regulation, and the associated added documentation, will decrease the efficiency of the market and lead to less liquidity for customer sell orders.

G-43 (d)(iii) Definitions – "Broker's Broker"

It is peculiar that a broker dealer utilizing the services of a broker's broker, in the process of achieving best execution for a client, will be subject to greater regulatory requirements than if the firm were to simply bid the customer bonds directly. A dealer responding to a customer bid wanted will have the same obligations of G-18 and G-19 whether bidding the item internally or placing it out for bid with a broker's broker, but in the latter instance, the dealer will be subjecting itself to the possibility of having to maintain additional internal records as to the bid process. In a time where there is generally less capital committed to the market, the new rule discourages dealers from competitive ("in-comp") bidding.

The definition of a Broker's Broker states, among other things, that the firm "holds itself out as a broker's broker" to be included in the definition. A number of broker dealer firms place bids wanted out with multiple broker's brokers and/or place bids wanted out directly with a number of other broker dealers. As a dealer's business is not usually "principally" effecting transactions for other dealers but for its client, would a broker dealer be exempt from the definition or is acting like a broker's broker the equivalent of "holds itself out as a broker's broker?

Also, many dealers post the same bid wanted with multiple broker's brokers, ostensibly for compliance reasons. Does the use of multiple broker's brokers create an unfair practice with respect to G-17, as, in virtually every case, the bond can only trade to one party? Furthermore, if a dealer uses multiple brokers, should that be disclosed to the broker so that the broker can disclose that fact to potential bidders? The Draft Notice cites G-17 and the notion that the bids wanted process should not be used for price discovery only. If the same bond is out for the bid with multiple broker's brokers, and the bond can only trade once, would that be viewed negatively by the regulators, barring disclosure to the marketplace? Finally, if a broker's broker receives a bid wanted that has been posted to multiple firms, does the broker need to use the same level of care as if the item were for its own account (an odd notion in and of itself, given that broker's brokers do not trade for their own account) when the broker's clients may be at a disadvantage when bidding? We hope the new regulation will clarify these points.

G-43(b)(vii) Prohibition against changing prices

The proposed G-43 regulations, written for the broker's broker market, by its definition includes all of the electronic trading platforms. A major product line for most of the ATS's is the creation of Private Label websites that are branded for specific firms which include both filters for the type of inventory allowed and customized matrices for marking up of inventory. Virtually all firms request a matrix grid, whereby the ATS marks-up inventory by a suggested predetermined amount in order for a financial advisor to readily view the end client's net yield and the amount of commission associated with the trade. The matrix grids can be applied to both the bid side as well as the sell side of the market. Additionally, firms with direct lines often ask for customization for their internal needs. For example, some firms may not be able to accommodate the fee schedule and ask for the fee to be imbedded in the price of the offering. The proposed language would be meaningless as all ATS's would be required to inform every registered firm that every price they post will be changed, and in multiple ways, as each recipient firm defines its own matrix. Current guidelines already prohibit unfair dealing. Isn't a broker arbitrarily changing prices already prohibited from such activity? The MSRB should remove this language or modify it to accommodate private label websites that allow customers and registered reps to view inventory.

G-43(b)(ix) Conduct of Bids Wanted and Offerings – Below Predetermined Parameters

TMC acknowledges the efforts of the MSRB to recognize the amount of odd-lot municipal volume that trades electronically and the unique set of circumstances surrounding electronic executions. The idea of a "safe harbor" is a step in the right direction for facilitating efficient trading and empowering market participants to make individual decisions. Regulation designed

to acknowledge the benefits of electronic trading and the growth of the Alternative Trading System community will promote greater access to market participants for product. As with the equity market, municipal market participants should have both the option to trade electronically or use the services of market professionals.

While TMC recognizes the MSRB's desire to limit the number of off market trades that result from the bids wanted process, the attempt to add written communication and/or oral confirmation will greatly reduce the efficiency and accuracy of the electronic market. TMC conducts 2,000 bids wanted daily, with the bulk of the items out for bid between 10am and 4pm. In volatile markets, peak volume can rise to 4,000 items out for bid daily. Many of these items are posted to TMC from API clients with direct line feeds to the TMC marketplace. These API users choose not to use the tools available to TMC's web clients; instead, they have developed their own tools for evaluation and analytics. It is not feasible to inform direct line feed clients that their bids fall outside predetermined parameters, and any change or addition to a broker's predetermined parameters would require every client of that broker to re-write its interface, change its database, and test the new functionality. The fallacy of the proposal lies in the belief that a single model will be sufficient for determining reasonableness. For example, TKG analytics, MSRB price history, material events, IDC evaluations, etc. are just some of the resources available to TMC's users to assist in the decision making process, and each of these tools offers traders a different level of perspective based on current market conditions.

Furthermore, many of the direct line clients generate bids algorithmically, with bids coming into the TMC marketplace seconds before the bid by time; it is fair to say that the clients' process of evaluating these items for the bid does not include use of TMC's tools. While TMC provides a suite of tools for security and market analysis, the professional client has the discretion to determine if and how to use each tool.

With respect to fair pricing, in response to the last MSRB Notice 2011-18, many market participants agreed that a broker's broker was not, and could not be, responsible for determining fair pricing. The modified language in the current release still proposes that the broker's broker provide a fair price, but the Board has relaxed the requirement to include a price band. TMC's response to this change is to note that its tools are designed to help with a user's valuation process, not to replace the decision maker. While TMC can certainly flag items/bids that seem rich or cheap, based on a model, determining a security's value is infinitely more complex. If this were such a simple task, one could define their safe harbor as simply the use of a major pricing service, and if the bid deviates by more than x% from the evaluation price, then notify the appropriate party. The reality is that designing and testing a system to establish fair value on as diffuse a market as the municipal marketplace would be a daunting task.

Equally important, the concept of written permission and documentation of conversations is time consuming in a normal market, but it completely breaks down in a volatile market. The most sophisticated models have difficulty pricing bonds during times of volatility. Examining the offerings of the online brokerage firms in volatile periods, one would see a significant drop

in inventory, as pre-configured filters kick out inventory at new price levels. Municipals are even more challenging to price, when one recognizes that there is no efficient hedge in the marketplace to track or model. For example, models based on Treasury prices self-destruct when large basis moves result in Treasury bonds moving significantly in price, while municipals move little. Recognizing that volatile periods will generate the most exceptions with any model, the burdens placed on participants to record and acknowledge price levels will be unbearable. If the model were to kick out a mere 5% of the bids on a high volume day, at just TMC, approximately 125 trades would fail the predetermined parameters. At 5 minutes per call, that would require over 10 hours of telephone conversations.

TMC believes that a standard of reasonable care for broker's brokers should include "reasonable" tools to help with the decision process, but the construction of a scheme to establish value in a fragmented and diffuse market seems to be more appropriate for a position taker than for an intermediary.

Rule G – 43(b)(vi) – Requirement of Sellers consent before contacting bidder on bids within a model's parameters (poor cover)

The requirement of a broker's broker to contact a seller for permission to contact a bidder, when the bid itself is within the parameters of the safe harbor is neither practical nor realistic. A selling dealer, who is acting in the best interest of its selling client, is not likely to give such approval. Furthermore, if the selling dealer allowed the broker to contact the bidder in some circumstances, but not on other similar instances, is the selling dealer dealing fairly with all of its clients? Also, the requirement to document the communication, the original bid, and the changed bid is superfluous and an added regulatory burden.

Also, in the above case, what recourse would the broker's broker have if given permission to contact the bidder? Under G-43(b)(v), the broker's broker cannot accept late bids. Can the broker accept a new bid from the bidder, or is the bidder given the option to remove the bid? Again, if the bidder can withdraw or lower the bid, what seller would ever grant such permission, unless the seller agrees that the bid is truly off-market and does not want to be party to such a trade?

There is a supposition that traders know what they are bidding on, but mistakes can happen, digits can be transposed, bids can be "fat-fingered", and the like. The MSRB's proposed rules arguably allow sellers to force (or attempt to force) trades in the case of erroneous bids. The need to get the seller's permission to alert a bidder to a potentially erroneous bid, in the case of a bid that falls within the parameters of the safe harbor, would put the bidder at a severe disadvantage in such circumstances. One commenter to the Board's first G-43 release observed that one of a broker's broker's main functions is to avoid trade prints that are not reflective of market value. TMC strongly agrees with the statement.

Contrary to the notion expressed in the Board's discussion of the revised rule, unfavorable cover bids are poor indicators of bid quality. In a fragmented market, there is no need to

assume that there will be more than one "market" bid, especially given the implicit acknowledgement that sometimes there are no market bids for a given item.

Rule G – 43(c)(i)(G) – Disclosure of Customer business
TMC fully supports the notion that broker's brokers should prominently disclose the types of firms that constitute its client base. However, to disclose to a seller information about the buyer of an item at the time of trade is unfair and against the anonymous nature of the broker's market. Customers should have the same protections as dealers. The disclosure to the seller on the client type is a loss of protection as to the identity of the client. Anonymity is an extremely important component of the utility of an intermediary (either a voice broker or an ATS) in the municipal market. Informing a seller that a buyer is a particular type of user compromises the concept that a buyer can function anonymously. Any regulatory requirement that would serve to compromise anonymity would be a negative development for a market that has always given participants ways to protect their identities.

Rule G – 43(c)(i)(H) Predetermined Parameters
As participants have stated in earlier comments, it is not the job of a broker's broker to establish fair market value. The mandated use of predetermined parameters is a Trojan Horse, as the proposed rule has now migrated to a model based determinant. Furthermore, requiring testing of tools is also a concern. Exactly how would a model be tested? With over 500,000 bids wanted in the market annually, what defines a successful model? If a bond trades outside its parameters and days later the market moves toward that price, was the model flawed or did the trader make a good decision?

TMC uses a number of tools to assist traders with making trade decisions. Many of these tools have been adapted to TMC's user base after years of client feedback. It would be anti-competitive for TMC to disclose its tools. Dealers decide which broker's broker or platform provides the best service for the type of business they are wishing to conduct. Web site design, integrated tools, depth of markets, and brokerage support are just a few of the variables that affect a trader's decision on whether to use a broker's broker on an ATS, or which one to use. If a trader does not like the service, he/she uses another firm or platform. Public disclosure of such tools is not necessary, as they are apparent to the user. TMC strongly believes that providing users with useful market and security specific tools should suffice to satisfy the Board's desire to improve bid quality. If a firm uses the same systematic approach for each posted bid wanted and has a set of tools that helps traders establish value, then there should be no need for a safe harbor.

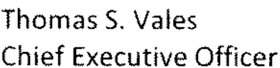
Rule G-8 (a) (xxv)(F) Books and Records
Rule G-8(a)(xxv)(F) lays out requirements for documentation whenever an offering price is changed. ATS's acting as centralized marketplaces receive thousands of bids and offerings

daily. TMC has approximately 30,000 municipal offerings daily, with dealers changing prices on their offerings constantly. There are myriad reasons for offerings to change: e.g., fluctuating market conditions, changes to a trader's net overall exposure, or a management decision to increase or decrease risk. In the taxable municipal market, dealers regularly post offerings that change whenever a taxable benchmark (typically a US Treasury) price changes, and offering prices can change several times per minute. Requiring brokers' brokers to document price changes would be of no value to the market, as traders know that offering prices are always subject to change. Additionally, documenting tens of thousands of price changes on a daily basis would be cost prohibitive.

In conclusion, TMC appreciates the Board's attempt to clarify some of the practices in the broker's brokers market. TMC believes, however, that a number of the Board's suggestions put an inordinate amount of responsibility with respect to establishing fair value on bids wanted onto the broker's broker and that associated record-keeping requirements are unduly onerous. Additionally, the proposed rule appears to favor sellers of bid wanted items vis-à-vis buyers, in terms of which party receives protection from potentially off-market levels. Finally, TMC feels that there are several circumstances in which rules that apply both to voice brokers and the ATS's are inappropriate. Specifically, firms that have direct line access to the ATS's and/or trade algorithmically are in no position to benefit from the provisions of G-43; TMC feels that a separate discussion with respect to ATS's and their users is warranted.

Thank you for giving us the opportunity to respond.

Sincerely,



Thomas S. Vales
Chief Executive Officer

November 1, 2011

Municipal Securities Rulemaking Board

Re: MSRB Notice 2011-50
Request for Comment on Revised Draft Rule G-43

Gentlemen:

Within the MSRB's Response to Comments: Erroneous Bids—Draft Rule G-43(c)(vi), part of the response reads as follows:

"Revised Draft Rule G-43 would not prohibit broker's brokers from notifying all bidders about material changes in a bid-wanted item or offered item (e.g., a change in the amount) or a change in the description that was advertised (e.g., the addition of a sinking fund or call), although Rule G-43(b)(iv) would prohibit the provision of that information to certain bidders on a preferential basis."

My question is this: If there is a material change in the description of a bond being advertised for the bid, e.g., the amount is incorrect, a call feature or sinking fund is not properly described, or if a municipal bond is taxable and is not advertised as such, is not the item as incorrectly advertised simply invalid and any bids null and void? As opposed to the broker's broker not being "prohibited" from notifying all bidders about material changes in a bid wanted item, should not the broker's broker be obliged to notify all bidders that the item was incorrectly described, all bids are void, and have the seller resubmit the item for the bid if the seller so chooses?

Can a potential buyer of any security, municipal or otherwise, be held to his/her bid if the security is advertised incorrectly in a material way? If an intermediary in the transaction becomes aware of the problem, should not the intermediary be obliged to halt the process?

Sincerely,

Paul Larkin
President
Vista Securities, Inc.

Wolfe & Hurst Bond Brokers, Inc.
30 Montgomery Street
Jersey City, New Jersey 07302

November 3, 2011

Via electronic mail
Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: **MSRB Notice 2011-50, Request for Comment on Revised Draft Rule G-43 on Broker's Brokers and Associated Amendments**

Dear Mr. Smith:

Please accept this letter as the response of Wolfe & Hurst Bond Brokers Inc. (hereinafter "WHBBI") to the Municipal Securities Rulemaking Board's (hereinafter "MSRB") Notice 2011-50: Request for Comment on Revised Draft Rule G-43 on Broker's Brokers, dated September 8, 2011. WHBBI also supports the comment letter submitted by the Securities Industry and Financial Markets Association (hereinafter "SIFMA"). While WHBBI appreciates the modifications made by the MSRB in re-drafting Rule G-43, there remain provisions of serious concern.

I. Rule G-43

Safe Harbor

Specifically, WHBBI is most disconcerted by Revised Draft Rule G-43(b). In this provision, the MSRB has developed a so-called "safe harbor" for broker's brokers. Although not directly required by the rule, this safe harbor effectively constitutes a mandate as to the way bid-wanteds and offerings are to be conducted. Rule G-43(b) directs the use of "predetermined parameters" to satisfy the fair pricing requirement of a broker's broker. Essentially, through the use of predetermined parameters, the provision requires that broker's brokers make a determination as to fair market value of a given bond. This is evidenced more clearly in Rule G-43(d)(vii) which indicates that the predetermined parameters are meant to identify most bids that may not represent the fair market value of securities. As noted in previous comment letters by WHBBI and various other broker's brokers and broker-dealers, it is not feasible for a broker's broker to determinate fair market value nor is this the role of a broker's broker.

Broker's brokers should not be in any way responsible for making a determination as to fair market value. The comments to Revised Draft Rule G-43(b) provide that, "the predetermined parameters could be based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids submitted to a broker's broker in previous bid-wanteds or offerings." Utilizing historical data, such as bids previously submitted, however, is not reflective

of the fair market value of a security in the present. Moreover, many of the bonds which are the subject of bid-wanteds are infrequently traded, making the RTRS System an ineffective tool for determining the price of a security. Additionally, many bonds are not rated (unlike equities), which eliminates the option of utilizing or relying on rating services.

As previously stated by WHBBI and several others through comment letters to Draft Rule G-43, it is the broker-dealer who should be responsible for determining whether a bid obtained by a broker's broker represents the fair market value for that security at a given time. It is the client of the broker's broker who has the tools and resources with which to determine fair and reasonable pricing for any given security. Moreover, the broker-dealer client does not expect a broker's broker to make such a determination. Indeed, imposing this obligation on a broker's broker completely alters the nature of the business. Since the clients of a broker's broker, broker-dealers and dealer portions of banks, are in a better position to make a determination as to fair market value, this responsibility should be solely imposed on them.

Deadlines

WHBBI strongly disagrees with Revised Draft Rule G-43(b)(v) which mandates that there be "...a deadline for acceptance of bids, after which the broker's broker must not accept bids or changes to bids." As written, this mandate applies to both "sharp" and "around time" deadlines. Such a requirement restricts the broker's broker from getting the best bid for its client, which will ultimately have a negative impact on the smaller retail clients and the market as a whole. Liquidity in the municipal bond market is not constant and the new rule should be flexible to accommodate the way the bond market actually functions.

This rule should be modified in the case of "around time" bid-wanteds only. Specifically, where a selling dealer requests an "around time" deadline, the broker's broker should be permitted to accept and change bids up until the point that the trade is marked for sale. Prohibiting modification at the point where the high bid is "put up" to the seller is restricting liquidity in the market. This rule change would be detrimental to the industry.

Client

WHBBI also find section G-43(a)(iii) problematic. This provision presumes that the client of a broker's broker is only the seller and imposes inefficient requirements for covering both the rule and the reality. A broker's broker is a dual-agent for the seller and the buyer of securities. It is not practical to require a broker's broker to get written consent from both the buyer and seller in advance of the bid-wanted or offering. This issue could be more easily resolved through a more thorough definition of a broker's broker which includes the dual-nature of their business.

If not modified as set forth above, this provision should at the very least clarify that the client's of a broker's broker could consent to a dual-agency relationship either through an initial service agreement or through Terms of Use on the firm's website.

Encouraging Bids

Rule G-43(b)(iii) restricts a broker's broker from "...encourage[ing] bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering." Again, a broker's broker cannot be required to determine what represents the fair market value of a security. With that being said, the broker's broker does not "encourage" or coerce any bid. It is not the role of a broker's broker in a bid-wanted situation to suggest a price, but rather to simply obtain all bids and provide the client with the highest bid received. It is the responsibility of the broker-dealer to determine whether the bid reflects fair market value and whether or not to continue with the transaction.

Preferential Information

Revised Draft Rule G-43(b)(iv) prohibits broker's brokers from giving preferential information to bidders. WHBBI understand that preferential information cannot be given to bidders, except in the case of errors. However, restricting the broker's broker from advising a bidder when their low bid is clearly not being used has a greater negative impact on the market. Under the proposed rule, if a broker's broker is requested to advise an inquiring low bidder where they stand only *after* the deadline for bids has passed, this severely limits that broker-dealer's ability to use capital elsewhere. This significantly restricts liquidity in the market and will ultimately have a negative impact on the small retail customers the MSRB is purporting to protect. Thus, the public policy should favor allowing broker's brokers to notify an inquiring client whether their bid is being used prior to the deadline of a bid-wanted. A broker's broker should be permitted to advise a broker-dealer if their bid is not being used prior to the completion of a bid-wanted or offering.

Erroneous Bids

As noted above, WHBBI objects to the use of predetermined parameters for bid-wanteds. An erroneous bid submission in a bid-wanted is generally quite obvious to the broker's broker conducting the "auction." These mistaken bids most often occur as a result of human error and should not be permitted to reach the marketplace as they do not reflect an accurate bid.

Setting aside the predetermined parameters for a bid-wanted, WHBBI maintains the position that requiring a broker's broker to obtain written permission from the seller prior to contacting the owner of an erroneous bid may result in a distortion of the market. This requirement may force the broker's broker to accept the clearly erroneous bid if the seller denies consent which in turn may result in an extreme price to the ultimate customer. This price will also be published and therefore impact the market for similar securities. If the broker's broker is forced to accept a clearly erroneous bid, it is practicing unfair trading and creating dishonesty in the market. Simultaneously, the broker's broker would be damaging important relationships with the client who submitted the erroneous bid.

Broker's brokers should be permitted to notify a bidder of a clearly erroneous bid without the consent of the seller and without providing the same opportunity for modification to all bidders. This would foster the ultimate goals of a fair, transparent and efficient market.

Definition

WHBBI notes that replacing existing draft rule G-43(d)(iii) with a more detailed definition of a broker's broker would have several benefits. Specifically, the definition would put market participants on notice of the nature and role of a broker's broker. It would also disclose the duties and responsibilities of a broker's broker. Given this type of definition, as elaborated more fully upon in WHBBI's April 25, 2011 comment letter, there would be no reason to include the phrase, "or that holds itself out as a broker's broker" in Rule G-43.

II. Rules G-8 and G-9

MSRB Rules G-8 and G-9 should be amended to reflect the changes to Rule G-43 as discussed above. The recordkeeping requirements as set forth in the revised draft rule are overly burdensome to broker's brokers and would cause unnecessary delay and inefficiency in the market.

Sincerely,

/s/ O. Gene Hurst, Esq.

O. Gene Hurst
President

MSRB NOTICE 2010-35 (SEPTEMBER 9, 2010)

REQUEST FOR COMMENT ON MSRB GUIDANCE ON BROKER'S BROKERS

The Municipal Securities Rulemaking Board ("MSRB") is requesting comments on proposed guidance to broker's brokers. For purposes of this notice, a "broker's broker" means a broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, and municipal securities dealers ("dealers") or that holds itself out as a broker's broker. A broker's broker may be a separate business or part of a larger business.[1] The proposed guidance is drafted in the form of a notice, but parts of it may eventually be incorporated into a proposed rule change or changes. The MSRB is also considering rulemaking that would provide that broker's brokers must adopt procedures incorporating this guidance, disclose them to sellers and bidders in writing at least annually, post them in a prominent position on their websites, and follow them. Among other things, such procedures would require that a broker's broker disclose the nature of its undertaking for the client.

BACKGROUND

The MSRB last issued guidance on broker's brokers in 2004,[2] when it noted the role of some broker's brokers in large intra-day price differentials of infrequently traded municipal securities with credits that were relatively unknown to most market participants, especially in the case of "retail" size blocks of $5,000 to $100,000. In certain cases, differences between the prices received by the selling customers as a result of a broker's broker bid-wanted auction ("bid-wanted") and the prices paid by the ultimate purchasing customers on the same day were 10% or more. After the securities were purchased from the broker's broker, they were sold to other dealers in a series of transactions until they eventually were purchased by other customers. The abnormally large intra-day price differentials were attributed in major part to the price increases found in the inter-dealer market occurring after the broker's brokers' trades.

Both Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA") enforcement actions have highlighted broker's broker activities that constitute clear violations of MSRB rules.[3] The MSRB recognizes that some broker's brokers make considerable efforts to comply with MSRB rules. However, the nature of rule violations brought to light by FINRA and SEC enforcement actions suggests that it may be appropriate for the MSRB to provide reminders and additional guidance on the application of its rules to broker's broker activities.

Much of the following guidance relates to the conduct of bid-wanteds. Broker's brokers also make "offerings" of municipal securities on behalf of other dealers. In the case of a typical offering, also referred to as a "situation," the selling dealer specifies a desired price or yield for the security and the broker's broker negotiates between the selling dealer and potential bidders to arrive at transaction terms that can be agreed to by the seller and another party. In contrast, a selling dealer in a typical bid-wanted asks the broker's broker to obtain the best bid it can, without specifying a desired price or yield. Bid-wanteds tend to involve smaller, retail size blocks of bonds and relatively infrequently traded securities. Situations tend to involve much larger blocks of bonds and more frequently traded securities. Most of the

abuses observed by the SEC and FINRA in their publicly announced enforcement actions have occurred in bid-wanteds. However, unless otherwise specified, the proposed guidance would apply to all types of broker's broker activities.

TEXT OF PROPOSED GUIDANCE

Review of Broker's Brokers Responsibilities

This notice reviews the fair pricing requirements of MSRB Rules G-18 and G-30 and the fair practice requirements of Rule G-17 as they apply to transactions effected by broker's brokers. It also discusses recordkeeping and record retention requirements for broker's brokers. While this notice discusses these particular rules in detail, all MSRB rules apply to broker's brokers.

For purposes of this notice, a "broker's broker" means a broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, and municipal securities dealers ("dealers") or that holds itself out as a broker's broker. A broker's broker may be a separate business or part of a larger business.

Rule G-18

Under Rule G-18, a broker's broker has an obligation to its dealer client to make a reasonable effort to obtain a fair and reasonable price in relation to market conditions -- the same duty that a dealer has to a customer in an agency transaction. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.[1]

Broker's brokers frequently rely on bid-wanted auctions ("bid-wanteds") to fulfill their Rule G-18 obligation.[2] A widely disseminated and properly run bid-wanted will offer important and valuable information on the fair market value of a security. The effectiveness of this process in obtaining the fair market value of a security, however, may vary depending on the nature of the security and how the procedure is conducted. A bid-wanted is not always a conclusive determination of fair market value. Therefore, particularly when the fair market value of a security is not known, a broker's broker may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations.[3]

Given the nature of rule violations concerning bid-wanteds brought to light by Securities Exchange Commission and Financial Industry Regulatory Authority enforcement actions,[4] and the importance of bid-wanteds to sales of municipal securities by retail investors, the MSRB has determined to provide the following detailed guidance on the actions that a broker's broker must take in determining fair market value, including guidance on the bid-wanted procedures used by broker's brokers.

If a bid-wanted is used to help satisfy the Rule G-18 obligation of a broker's broker, the broker's broker must disseminate it widely to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required. If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker must reach dealers with specific knowledge of the issue or known interest in securities of the type being offered. It is not consistent with the Rule G-18 obligation of a broker's broker for it to encourage off-market bids.[5]

In a bid wanted, the client of the broker's broker is presumed to be the seller. It is not consistent with the Rule G-18 obligation of a broker's broker for it to represent both the seller and the bidder unless that is disclosed prominently and both parties agree in writing in advance of a

transaction. In the case of a seller, "in advance" means at the time the seller directs the broker's broker to try to find bidders. In the case of bidders, "in advance" means prior to the submission of bids.

The broker's broker may not disclaim its Rule G-18 obligation to make a reasonable effort to obtain a fair and reasonable price in relation to market conditions, except in the limited circumstance described under "Agent v. Principal." If, after a reasonable effort, a fair and reasonable price cannot be determined within a reasonable degree of accuracy, the broker's broker must disclose that fact to its dealer client, in which case the broker's broker may still effect the trade with its dealer client if it acknowledges such disclosure in writing. Factors that might cause a broker's broker to come to that conclusion include: the number and nature of bids received in the bid-wanted; the nature of securities in question, including credit quality and features; and previous transaction prices for the securities in question and for similar securities.

Agent v. Principal

In a typical broker's broker operation, the broker's broker effects principal transactions for dealer clients. The nature of the transactions as either agency or principal is governed for purposes of the MSRB rules by whether a position is taken with respect to the security. The MSRB has previously published guidance that, for purposes of the uniform practice rules, the MSRB considers broker's broker transactions to be principal transactions even though the broker's broker may be acting for one party and may have agency or fiduciary obligations toward that party under state law.[6] Further, in any transaction in which a broker's broker takes a position in a security sold by its dealer client, even if such position is solely in the clearing or similar account of the broker's broker and regardless of the length of time such position is held, such transaction would be treated as a principal trade for purposes of all MSRB rules, not just the uniform practice rules.[7]

Although the MSRB has previously stated that limited agency functions may be undertaken by a broker's broker toward other dealers,[8] the MSRB wishes to clarify that these statements were only meant to apply to circumstances in which a broker's broker effects trades in a manner that is consistent with the March 26, 2001 Notice, including in particular where securities are never held in any account of the broker's broker for purposes of the comparison and settlement process. Preserving anonymity of seller and buyer through clearance and settlement is not consistent with that notice. In order to do that, a broker's broker would need to take the securities into one of its accounts, even if only its clearing account. In so doing, it would take a position in the securities and be a principal.

Transactions with Customers

The Board understands that some broker's brokers may effect occasional transactions with customers.[9] The Board reminds broker's brokers that Rule G-30 applies if they effect those transactions as principal transactions.[10] Rule G-30 provides that, for principal trades: "No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer or sell municipal securities for its own account to a customer except at an aggregate price (including any mark-down or mark-up) that is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transaction." In contrast, the obligation of a broker's

broker to a customer in an agency trade is subject to Rule G-18, which is the same standard applicable to broker's brokers' transactions with their dealer clients, as described above.

Rule G-17

As with any dealer, Rule G-17 applies to broker's brokers. Rule G-17 provides: "In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." As the MSRB has previously stated,[11] dealers are entitled to expect that other dealers will act in a professional manner in pursuit of their own interests and in compliance with their own obligations under MSRB rules and other applicable laws, rules, and regulations. This includes the duty of each dealer not to act in an unfair, deceptive, or dishonest manner in an inter-dealer transaction. However, with the exception noted below, the special fair pricing responsibilities found in Rules G-18 and G-30 do not apply to inter-dealer transactions. Broker's brokers transactions present an exception to the general rule for inter-dealer transactions. When a broker's broker undertakes to act for or on behalf of another dealer - either by finding a buyer for the dealer's securities or finding securities that the dealer wishes to buy - a special relationship is created. This differs from the situation normally found in other inter-dealer trading, where each party is presumed to be acting in its own interest.

As noted above, the MSRB understands that some broker's brokers have customers. Because of the potential conflict of interest that this may create, Rule G-17 requires that, if broker's brokers have customers, they must disclose that to both sellers and bidders in writing. Furthermore, broker's brokers with customers must put information barriers in place to ensure that customers are not provided with information about securities of other clients, including the ownership of such securities and information about bids (other than the winning bid that is reported to the MSRB).

Furthermore, broker's brokers could violate Rule G-17 by self-dealing. If a broker's broker is part of a larger business, the broker's broker must put information barriers in place to prevent non-public information (including information about bids) from being transferred from the broker's broker to the rest of the business organization. It is clearly a deceptive, dishonest, and unfair practice for a dealer holding itself out as broker's broker to purchase securities for its own account, rather than for the account of the highest bidder when a seller has engaged the broker's broker to effect a trade on its behalf. This conduct violates Rule G-17 whether done directly or indirectly by interposing another dealer in the process.

Broker's brokers are required by Rule G-17 to conduct bid-wanteds and situations in a fair manner, and they must not take any action that works against the client's interest to receive advantageous pricing, subject to the ability of both the seller and the bidder to agree in advance of a transaction that the broker's broker may represent the interests of both the seller and the bidder.

Rule G-17 requires that broker's brokers not give preferential information to bidders in bid-wanteds on where they currently stand in the bidding process. This prohibition precludes "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out," etc. Broker's brokers must not contact bidders in bid-wanteds about their bid prices unless there is advance disclosure to the client that this may happen and all bidders are given the opportunity to adjust their bids. Otherwise, discussions with bidders during a bid-wanted must be limited to discussions about the characteristics and quality of the security.

Finally, as described in prior enforcement actions,[12] it is a deceptive, dishonest, and unfair practice for a broker's broker to submit fake cover bids, to adjust a bid without the bidder's knowledge, to fail to inform the selling dealer of the highest bid, to accept bids after a bid deadline, or to submit fictitious trade prices.

Recordkeeping/Record Retention

Broker's brokers must keep records of all bids (including "quick answer" bids), together with time of receipt, for at least three years. Records of bids must not be overwritten (*e.g.*, when a new bid is entered).

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[1] MSRB Notice 2004-3 (January 26, 2004).

[2] Broker's brokers also make "offerings" of municipal securities on behalf of other dealers. In the case of a typical offering, also referred to as a "situation," the selling dealer specifies a desired price or yield for the security and the broker's broker negotiates between the selling dealer and potential bidders to arrive at transaction terms that can be agreed to by the seller and another party. In contrast, a selling dealer in a typical bid-wanted asks the broker's broker to obtain the best bid it can, without specifying a desired price or yield. Bid-wanteds tend to involve smaller, retail size blocks of bonds and relatively infrequently traded securities. Situations tend to involve much larger blocks of bonds and more frequently traded securities. Unless otherwise specified, the proposed guidance would apply to all types of broker's broker activities.

[3] MSRB Notice 2004-3 (January 26, 2004).

[4] *FINRA v. Associated Bond Brokers, Inc.* Letter of Acceptance, Waiver and Consent No. E052004018001 (November 19, 2007) (broker's broker violated Rule G-17 by lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers); *FINRA v. Butler Muni, LLC* Letter of Acceptance, Waiver and Consent No. 2006007537201 (May 28, 2010) (broker's broker violated Rule G-17 by failing to inform the seller of higher bids submitted by the highest bidders); *D. M. Keck & Company, Inc. d/b/a Discount Munibrokers, et al.*, Exchange Act Release No. 56543 (September 27, 2007) (broker's broker violated Rules G-13 and G-17 by disseminating fake cover bids to both seller and winning bidder; broker's broker violated Rules G-14 and G-17 by paying seller more than highest bid on some trades in return for a price lower than the highest bid on other trades, in each case reporting the fictitious trade prices to the MSRB's Real-Time Trade Reporting System); *Regional Brokers, Inc. et al.*, Exchange Act Release No. 56542 (September 27, 2007) (broker's broker violated Rules G-13 and G-17 by disseminating fake cover bids to both seller and winning bidder; broker's broker violated Rule G-17 by accepting bids after bid deadline); *SEC v. Wolfe & Hurst Bond Brokers, Inc. et al.*, Exchange Act Release No. 59913 (May 13, 2009) (broker's broker violated Rule G-17 by disseminating fake cover bids to both seller and winning bidder and by lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers). These cases also found violations of Rules G-8, G-9, and G-28.

[5] This conduct could also be a violation of Rule G-17.

[6] MSRB Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems (March 26, 2001) (the "March 26, 2001 Notice").

[7] In the March 26, 2001 Notice, the MSRB contrasted the typical broker's broker operation with the electronic trading system described in such notice, about which the notice provided: "It appears to the MSRB that the dealer operating the system is effecting agency transactions for dealer clients." Among the representations relevant to that conclusion were: "Participants are, or may be, anonymous during the bid/offer/negotiation process. After a sales contract is formed, the system immediately sends an electronic communication to the buyer and seller, noting the transaction details as well as the identity of the contra-party. The transaction is then sent by the buyer and seller to a registered securities clearing agency for comparison and is settled without involvement of the system operator. The system operator does not take a position in the securities traded on the system, even for clearance purposes. Dealers trading on the system are required by system rules to clear and settle transactions directly with each other even though the parties do not know each other at the time the sale contract is formed."

[8] MSRB Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002); *see also* MSRB Notice 2004-3.

[9] MSRB Rule D-9 provides that: "Except as otherwise specifically provided by rule of the Board, the term 'Customer' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

[10] *See also* the discussion in this notice on the application of Rule G-17 to transactions with customers by broker's brokers.

[11] MSRB Notice 2004-3.

[12] *See* note 4.

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REQUEST FOR COMMENT

The MSRB requests comments on the proposed guidance. As noted above, it is drafted in the form of a notice, but parts of it may eventually be incorporated into a proposed rule change or changes.

Comments should be submitted no later than November 15, 2010 and may be directed to Peg Henry, Deputy General Counsel.[4]

September 9, 2010

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[1] The MSRB considers it appropriate to define "broker's broker" according to function, rather than to use the definition of "broker's broker" contained in SEC Rule 15c3-1(a)(8)(ii), which was developed to determine the appropriate net capital requirement for certain broker's brokers.

[2] MSRB Notice 2004-3 (January 26, 2004).

[3] *FINRA v. Associated Bond Brokers, Inc.* Letter of Acceptance, Waiver and Consent No. E052004018001 (November 19, 2007) (broker's broker violated Rule G-17 by lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers); *FINRA v. Butler Muni, LLC* Letter of Acceptance, Waiver and Consent No. 2006007537201 (May 28, 2010) (broker's broker violated Rule G-17 by failing to inform the seller of higher bids submitted by the highest bidders); *D. M. Keck & Company, Inc. d/b/a Discount Munibrokers, et al.*, Exchange Act Release No. 56543 (September 27,

2007) (broker's broker violated Rules G-13 and G-17 by disseminating fake cover bids to both seller and winning bidder; broker's broker violated Rules G-14 and G-17 by paying seller more than highest bid on some trades in return for a price lower than the highest bid on other trades, in each case reporting the fictitious trade prices to the MSRB's Real-Time Trade Reporting System); *Regional Brokers, Inc. et al.*, Exchange Act Release No. 56542 (September 27, 2007) (broker's broker violated Rules G-13 and G-17 by disseminating fake cover bids to both seller and winning bidder; broker's broker violated Rule G-17 by accepting bids after bid deadline); *SEC v. Wolfe & Hurst Bond Brokers, Inc. et al.*, Exchange Act Release No. 59913 (May 13, 2009) (broker's broker violated Rule G-17 by disseminating fake cover bids to both seller and winning bidder and by lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers). These cases also found violations of Rules G-8, G-9, and G-28.

[4] Written comments will be posted on the MSRB web site. Comments are posted without change and personal identifying information, such as name or e-mail address, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

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Alphabetical List of Comments on MSRB Notice 2010-35 (September 9, 2010)

1. Associated Bond Brokers, Inc.: Letter from Pamela M. Miller, President, dated November 10, 2010
2. Hartfield, Titus & Donnelly, LLC: Letter from Mark J. Epstein, President, dated November 22, 2010
3. Regional Brokers, Inc.: Letter from Joseph A. Hemphill, III, CEO, and H. Deane Armstrong, CCO, dated November 15, 2010
4. RW Smith & Associates: E-mail from S. Lauren Heyne, Chief Compliance Officer, dated November 19, 2010
5. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated November 15, 2010
6. TheMuniCenter, L.L.C.: Letter from Thomas S. Vales, Chief Executive Officer, dated November 10, 2010
7. Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, dated November 5, 2010
8. Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, dated November 29, 2010

Associated Bond Brokers, Inc.
3232 McKinney Avenue, Suite 690
Dallas, Texas 75204
(214) 922-9300

November 10, 2010

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke St, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2010-35: Request for Comment on MSRB Guidance on Municipal Securities Brokers Brokers

Dear Ms. Henry:

Associated Bond Brokers, Inc ("ABBI") appreciates the opportunity to respond to the notice regarding guidance for Municipal Securities Brokers Brokers ("MSBB's"). You have, or will be, receiving a response to the proposed guidance from the Securities and Financial Markets Association ("SIFMA") on behalf of the MSBB committee of SIFMA of which we are a member.

The SIFMA response is a result of multiple meetings and conference calls between MSBB committee members and representatives of SIFMA and represents the consensus view of the committee members. We are in agreement with the bulk of the response as to the role of MSBB's in the marketplace and especially the part of the response as it relates to the application of rule G-18 to MSBB's.

ABBI operates exclusively as a MSBB and deals only with registered broker dealers or dealer banks. Our business model does not include the ability to execute with SMMP's or Institutional clients. We hope that MSRB will carefully consider the points enumerated in the SIFMA response before acting on the proposed guidance.

Very truly yours,

Pamela M. Miller
President

Hartfield Titus & Donnelly, LLC
Municipal Securities Brokers www.HTDonline.com

November 22, 2010

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2010-35:

Dear Ms. Henry:

Hartfield, Titus & Donnelly, LLC ("Hartfield") appreciates this opportunity to submit comments on the Municipal Securities Rulemaking Board's ("MSRB") Notice 2010-35: Request for Comment on MSRB Guidance on Municipal Securities Broker's Brokers (the "Notice"). Hartfield also participated in the drafting of the comment letter on the Notice submitted by the Securities Industry and Financial Markets Association ("SIFMA") (the "SIFMA Letter"), and we support the views expressed therein. However, given the substantial risks that we believe that certain aspects of the Notice pose to the efficient operation of the municipal securities secondary market (the "Market"), we felt compelled to submit these additional comments.

Agent versus Principal

We believe that the SIFMA Letter correctly characterizes the Notice's treatment of whether transactions are effected on a principal or agency basis as elevating form over substance, for the reasons identified therein. The Notice appears to characterize as a principal transaction any transaction in which anonymity is maintained. It is true that for all MSBB trades (consisting of matched buy and sell transactions) the dealers involved do not settle directly with each other as principal. However, this is only done to ensure that the dealer-required anonymity is maintained. The only other alternative would be to give up the dealer's names to each other and the dealers do not want this. The Notice's interpretation then takes this form of settlement and applies it to the substance of how trades are effected. This is an inappropriate reason for the new interpretation of the application of MSRB Rules. As a further note, the vast majority of MSBB trades are effected without securities moving through an MSBB's clearing accounts. Some MSBBs clear on a fully disclosed basis and their agent is principal to both sides of a trade. Others, Hartfield included, net a vast majority of their trades through the National Securities Clearing Corporation ("NSCC") and NSCC is the principal to both sides of the trade. Thus, very few

securities are held, even for settlement purposes, in an account of an MSBB, yet, under the Notice, all transactions would be deemed to be principal transactions.[1]

We believe that the Notice's analytical framework described above ignores the "special relationship" between MSBBs and their dealer counterparties that is clearly acknowledged in Rule G-18. MSBBs work at the direction of their dealer-counterparties, effectively as an extension of their trading desks. MSBBs conduct their bid wanteds and other activities on behalf of dealer counterparties entirely within the parameters determined by the dealer (so long as such parameters do not violate any rules or standards of conduct). The most fundamental of these parameters is that all parties to a transaction with an MSBB demand that their anonymity be maintained. This anonymity allows both sellers and bidders to deal openly with the MSBB, and the Market to function efficiently.

We agree with the SIFMA Letter that the functional role that a party plays in a transaction should determine its regulatory treatment, and that principal transactions should be determined on the basis of those functions traditionally associated with principal trading: the maintenance of a proprietary inventory and the related ability to set the price for security transactions. We point out that MSBBs broker municipal securities and do not function in a manner traditionally understood to be principal trading.

Rule G-18

Currently Rule G-18 treats MSBB dealer transactions in the same manner as dealer agency transactions with customers. For the reasons stated in the SIFMA Letter, we believe that this treatment is appropriate and should be maintained. MSBB dealer transactions are the functional equivalent of dealer agency transactions. We are concerned that the same analytical flaw described above underlies the Notice's proposal to subject MSBB dealer transactions to a higher standard than are dealer agency transactions with customers. Currently, dealers are held to a reasonable efforts standard in agency transactions with customers, as are MSBBs in their dealer transactions. The Notice elevates the MSBBs' standard to a higher standard of determining whether a given price is fair and reasonable, which elevates certain interdealer transactions to a higher standard than dealer transactions with customers.

We believe that the Notice's proposed revision of Rule G-18 is the practical equivalent of subjecting MSBB dealer transactions to Rule G-30, even though the wording of the two standards would remain distinct. Rule G-30 prohibits transactions unless a determination can be made that the price is fair and reasonable. The revised Rule G-18 would require an MSBB to make that determination and give notice to a dealer in cases where it is unable to conclude that a high bid was fair and reasonable. In effect, the MSBB is being required to implicitly endorse the fairness and reasonableness of every high bid it receives in cases where it does not send the notice to the dealer. This is not required of a dealer when acting as agent for a customer, regardless of the form of settlement.

In addition to the MSBB's new obligations described directly above, the dealer, in order to proceed with the trade, must respond **in writing** that they understand the determination made and that

[1] We note that in the current settlement environment, dealers generally maintain customer securities in the dealer's account (for benefit of its customers (the "FBO Account")) at The Depository Trust Company ("DTC"). When a dealer transacts "as agent" for a customer, the securities are delivered out of the FBO Account to the dealer's "proprietary" account at DTC, and are delivered to/from the dealer's proprietary account. Thus, the delivering/receiving counterparty knows the dealer as the principal counterparty in the transaction. Thus, the Notice's interpretation of a principal transaction could just as well apply to a dealer's agency transaction for a customer.

they want to sell anyway. We believe that this notice and acknowledgement procedure is the practical equivalent of simply prohibiting such transactions. This will be an impediment to liquidity in the Market.

As an alternative to the higher fair price standard and the proposed written notice procedure, we suggest that we inform the dealer if we have reason to believe that a bid is either above or below certain parameters which we would establish for this purpose, and disclose to dealers. Then we would follow the dealer's directions on the actions to take. We would keep as part of our documentation of the transaction a notation of the analysis and communication. For the reasons set forth in the SIFMA Letter, we believe that dealers are in vastly superior positions to make final fair price determinations, and since we work for the dealer, we should remain under the current Rule G-18 requirement of having no reason to believe that a price is not fair.

We also request, should the MSRB decide to move forward with this amendment to Rule G-18, that the rationale for not subjecting dealer agency transactions with customers to Rule G-30 also be explained. Traditionally, dealers' agency transactions with customers are functionally equivalent to MSBB transactions with dealers (hence the similar treatment under Rule G-18) because neither the dealer nor the MSBB trades from inventory in these cases, and they do not determine the sale or purchase price. We believe MSRB should explain why dealers are in need of protections greater than those afforded to customers (including retail customers).

Rule G-17

Hartfield agrees with the Notice, and the SIFMA Letter, that MSBBs are subject to Rule G-17 in the conduct of their municipal securities business, and Hartfield takes these obligations very seriously. However, we also agree with the SIFMA Letter that broad limitations or prohibitions on communications with trading counterparties are fraught with risk. The role of the MSBB is to facilitate liquidity and the efficient functioning of the Market. We feel that the dissemination of market information, in a manner consistent with maintaining anonymity, is an appropriate communication with dealers. This information may be regarding suspected erroneous bids, whether high or low, or their position in the bidding process. (Information on position in the bidding process will allow them to deploy their capital elsewhere. This is an indispensible part of the bid-wanted process which encourages a dealer to place bids on other items.) Our alternative here is the same as to the Notice's G-18 guidance; allow the MSBB to maintain documentation of the analysis of the bid and conversation with its counterparty in these instances.

Hartfield also is extremely concerned about the Board's suggested "conflicted of interest" and its potential for bifurcation of the market, dealer vs. customer, that may result from the Notice's proposed restrictions on communications with MSBB's non-dealer trading counterparties, which are limited to institutional investors and Sophisticated Municipal Market Professionals ("SMMP"). As stated in the SIFMA Letter, we also believe that these Market participants should not be prohibited from receiving information (again in a manner consistent with anonymity) about what similar securities have recently traded for, or at what price they may be currently bid. This type of information allows these Market participants to make more informed buy/sell decisions. Should such restrictions be deemed necessary by the MSRB, we do not understand why they would not apply to all participants in the Market, thereby prohibiting all Market professionals (dealers, banks, Municipal Securities Dealers and MSBBs) from sharing this information with non-dealer Market participants.

We believe that these communications should continue to be judged under Rule G-17, and communications that have the effect of manipulating the market should be sanctioned accordingly. However, since Market information is as important to institutional investors and SMMPs as it is to dealers, we recommend that no differentiation be placed on which Market participants receive Market

information. This will prevent disenfranchising the non-dealer segment of the Market and provide for the uniform distribution of information in the Market.

* * * *

We thank you again for the opportunity to comment on this important matter.

Sincerely,

Mark J. Epstein
President

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600,
Alexandria, VA 22314

November 15, 2010

Dear Ms. Henry,

Regional Brokers, Inc. is pleased to have been part of the recent conversations regarding the current status of Municipal Securities Broker's Brokers (MSBBs) and wishes to provide the following comments regarding MSRB Notice 2010-35.

General Information regarding Regional Brokers, Inc.

Regional Brokers, Inc. (RBI) is registered with the Financial Industry Regulatory Authority as a Broker/Dealer. RBI transacts business as a Municipal Securities Broker's Broker (MSBB). As an MSBB, RBI acts exclusively as a riskless principal in the purchase and sale of municipal securities, notes, and other instruments on behalf of an undisclosed purchaser or seller. RBI does not employ research analysts, nor does it provide research services. RBI does not have or maintain any municipal securities in any proprietary or other accounts. As a riskless principal, RBI acts in the limited capacity of providing anonymity, communication, and order matching. RBI does not participate in the decision to buy or sell municipal securities, nor does it exercise discretion as to the price at which transactions are executed. RBI does not determine the time of execution, and is compensated by a commission rather than a mark-up. RBI does not make its own markets on securities, nor does it bid on items that are advertised for the bid on its auction system. RBI does not have any "customers" as defined by FINRA, and trades only with FINRA member Broker/Dealers.

Regarding Rule G-18

The MSRB has stipulated in Notice 2010-35 that, under Rule G-18, a broker's broker has an obligation to make a reasonable effort to obtain a fair and reasonable price (for a bond during a bid wanted auction) in relation to market conditions. Additionally, Notice 2010-35 states that Broker's Brokers are responsible for ensuring that they do not rely solely on their bid wanted process to ensure that a fair and reasonable price has been presented. (MSRB's guidance letter, page 2, regarding Rule G-18, "A bid-wanted is not always a conclusive determination of fair market value. Therefore, particularly when the fair market value of a security is not known, a broker's broker may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations.")

Notice 2010-35 further states "The broker's broker may not disclaim its G-18 Rule obligations to make a reasonable effort to obtain a fair and reasonable price in relation to market conditions... If after a

reasonable effort, a fair and reasonable price cannot be determined within a reasonable degree of accuracy, the broker's broker must disclose this fact to its dealer client, in which case the broker's broker may still effect the trade with its dealer client if it acknowledges such disclosure in writing."

The proposed guidance of the Notice changes the accepted business relationship that has existed between the Broker/Dealer and the MSBB.

Historically, as an MSBB, RBI has been engaged by a Broker/Dealer to provide a service- that of operating an auction and providing to the Broker/Dealer the best bid obtainable from that auction. In order to achieve this, RBI, unless instructed to do otherwise by the Selling Broker/Dealer, makes its best effort to widely advertise its auction items, to actively call Broker/Dealers that might be likely candidates to bid on the bonds, and to attempt to find the best bid in the marketplace at the time of the auction. However, despite its best effort to widely advertise the auction, RBI cannot control the price of the bids that it receives on its auction items, and has no control over whether the Seller wishes to sell the bonds at the price provided by the auction.

There has been only general guidance given by the MSRB as to what would represent "fair and reasonable" and the conclusion of whether a bid is fair and reasonable is a subjective opinion based on various factors, many of which an MSBB does not have access to. These factors would include an analysis of the credit worthiness of the issuer, the reasons that the bonds are being sold (or bought) by the Broker/Dealer, and whether the Broker/Dealer has developed any internal strategies for the sale (or purchase) of particular issues (such as that Broker/Dealer's expectations of the performance of the bond in the future).

It is RBI's opinion, therefore, that the ultimate decision regarding whether a bid is "fair and reasonable" can be made only, and exclusively, by the Broker/Dealer that advertises bonds through RBI's auction.

Regarding Rule G-17

RBI agrees with the Proposed Guidance's statement that, like all other municipal securities dealers, Rule G-17 applies to MSBBs, and that all dealers have an obligation not to act in "any unfair, deceptive or dishonest manner" in the conduct of their securities business. However, RBI would comment that certain recommendations in Notice 2010-35 regarding Rule G-17 are overly stringent in their prohibitions against certain practices that are beneficial to the industry.

For example, Notice 2010-35 states that "broker's brokers not give preferential information to bidders in bid-wanteds on where they currently stand in the bidding process". This prohibition, as stated, would prohibit a bidding Broker/Dealer from being told whether or not they are "currently being used" or "not being used" on an item. This information is not preferential and is helpful to a Broker/Dealer that needs to know what capital commitments it may have outstanding.

Also, Notice 2010-35 stipulates that, if one Broker/Dealer is contacted because the MSBB has determined that they made an error in their bid, that "all bidders are given the opportunity to adjust their bids". This is an unnecessary requirement, in that the one Broker/Dealer is being contacted solely

for the reason that a mistake may have occurred. Contrary to the idea that this Broker/Dealer is being given preferential treatment, it is in fact the market that is being protected, to prevent an incorrect price from being quoted in the market. RBI acknowledges that in exercising the verification of a bid that it will be held accountable under Rule G-17. RBI also notes that, under Rule G-13, an incorrect bid, thereby not a "fair and reasonable price", may not in any case be distributed or published.

General Comments

Although the rules under which Municipal Securities Broker's Brokers currently operate are for the most part not codified, they are generally accepted by the Broker/Dealer community as having been developed over years of practical application. And, while RBI supports all attempts by the MSRB to protect the municipal market from non-compliance, we believe that the solutions offered by Notice 2010-35 raise questions that must be answered before their implementation.

For example, will (or, can?) the MSBB's opinion as to whether a bid is "fair and reasonable" play any part, in practicality, in the decision of a Broker/Dealer (and their customer) to sell a bond? What is the benefit of a written disclosure between a Broker/Dealer and an MSBB unless that disclosure is reported to the party that has an economic interest in the sale of the bond? Which party is responsible for generating the letter? Will this disclosure also be reported to the MSRB, and at what point must the written document be presented and to whom? Would an MSBB incur liability in a case where the bonds are sold, despite the MSBB's opinion that the bid was not fair and reasonable? Is the bidder, who has produced the questionable bid, to be included in the written documentation trail? What avenue will remain for distressed sellers who need to liquidate a municipal bond position but are unable to because the Broker/Dealer will not agree to a written document as a condition of sale? And, since a price that is too high in the market is just as "unfair and unreasonable" as a price that is too low, will these disclosures have to be fulfilled in an equivalent manner?

RBI looks forward to working with the MSRB and the Broker/Dealer community to answer these and other questions that will arise if the proposals of the Notice are implemented, and hopes that the MSRB would feel free to have its staff members visit RBI's offices in order to gain first hand experience regarding our business model.

Looking forward, RBI believes that these ongoing discussions should explore additional areas of MSBB industry practices such as:

Standardization of disclosure statements by MSBBs regarding their policies and procedures

Standardization of information regarding bid wanted auctions that can be disclosed (and when)

Standardization of when and how a possible incorrect bid placed on an auction item can be verified

RBI has endeavored to develop policies and procedures that address the issues raised by Notice 2010-35, and hopes that the municipal industry will be able to develop guidelines that are practical, workable, and most importantly, efficient, fair and reasonable.

Sincerely,

Joseph A. Hemphill III, CEO

H. Deane Armstrong, CCO

Peg Henry

From: Lauren Heyne
Sent: Friday, November 19, 2010 4:59 PM
To: Peg Henry
Subject: MSRB Notice 2010-35

Ms. Henry,

Although RW Smith & Associates did not submit its own comment letter regarding MSRB's proposed guidance on Broker's Brokers, our CEO, Paige Pierce, participated in the development of the comment letter SIFMA submitted. On behalf of Ms. Pierce and RW Smith & Associates, please note that we fully support SIFMA's comments on this issue.

Thank you.

S. Lauren Heyne
Chief Compliance Officer
Phone 206.420.7860
Fax 206.420.7861

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November 15, 2010

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2010-35: Request for Comment on MSRB Guidance on Municipal Securities Broker's Brokers

Dear Ms. Henry:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2010-35[2] (the "Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB requests comments on draft interpretive guidance on municipal securities broker's brokers ("MSBBs").

SIFMA supports effective and efficient regulation of the municipal securities markets that helps to aid market liquidity in a manner consistent with customer protection. As described more fully below, we are supportive of certain aspects of the proposed guidance ("Proposed Guidance"), but believe that, in important respects, the Proposed Guidance is inconsistent with the limited activities in which MSBBs engage, and may limit the effectiveness of MSBBs in carrying out the important role they play in the municipal securities secondary markets. We believe the adoption of the Proposed Guidance would impede the efficiency of the municipal securities interdealer market, to the ultimate detriment of investors in municipal securities. Lastly, we do not support the Proposed Guidance regarding Rule G-18, which imposes requirements on MSBBs that are not imposed by the rule as currently in effect. As described more fully below, we believe that the

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] MSRB Notice 2010-35 (Sept. 9, 2010).

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proposed additional requirements are inconsistent with the role of MSBBs, and also constitute an amendment to the rule which should be addressed in a separate rulemaking. Accordingly, SIFMA requests that the MSRB (1) withdraw the Proposed Guidance regarding Rule G-18 to the extent it imposes obligations on MSBBs in excess of what the rule requires, and (2) modify other aspects of the Proposed Guidance as requested below.

Role of MSBBs in Municipal Securities Secondary Market

MSBBs play a very important role in the workings of the secondary municipal market. Few markets for new issues of securities can function efficiently or well without the support of a secondary market where securities can be traded after they are first sold in the primary market. In addition to supporting the primary market, a thriving secondary market also serves investors by providing them with an array of securities to suit their investment needs, as well as providing an environment to buy and sell their securities quickly when necessary. MSBBs provide liquidity to the secondary bond market, extended distribution networks, information flow, and anonymity to market participants.[3]

Moreover, as MSBBs do not inventory securities, they are never in competition with their counterparties. Rather, the role of an MSBB is to act as an intermediary representing the counterparty's trading desk. MSBBs do not employ research analysts or provide research services. Lacking the pressure of maintaining the profitability of their own proprietary accounts, their role is fundamental: provide superior market execution with competitive market pricing, information flow and enhanced services to assist secondary market counterparties achieve success within the marketplace.

MSBBs facilitate and effect transactions through: new issue trading, bid-wanted trading, situation trading, swap trading, and by providing greater information flow or "color" on securities and the market in general. When secondary market participants cannot or do not wish to obtain bids directly for bonds they want to sell, they ask one or more MSBBs to obtain bids from trading desks across the country. When the bid-wanted auction item is given to an MSBB, bids are elicited via a blind auction process. In a bid-wanted, the MSBBs never know what the "sell at" price is before the end of the auction when the seller decides whether or not to accept the highest bid.

MSBBs advertise their bid-wanted items electronically (through Bloomberg, proprietary online trading platforms, proprietary websites, electronic-mail dissemination applications, fax dissemination applications, vendors, etc.) and over the phone by making direct contact with

3 "Certain markets. . .are. . .informally organized around interdealer brokers, which display the bids and offers of other dealers anonymously. . .[I]nterdealer brokers provide liquidity by providing a central mechanism to display the bids and offers of multiple dealers and by allowing dealers. . . to trade large volumes of securities anonymously and efficiently based on those bids and offers." Securities and Exchange Commission, "Regulation of Exchanges," Release No. 34-38672, File No. S7-16-97 at 40 (May 23, 1997) [hereinafter Regulation of Exchanges] (citations omitted).

municipal bond trading desks nationwide. MSBBs solicit bids from interested parties, asking for bids to be received by a certain time during the trading day. All auction parameters are determined by the selling party and the MSBB is bound by those parameters in their intermediary (agency) role.

Established and reputable MSBBs maintain full trading history on all items; bid-wanted items (full description of all bid-wanted items), bid pads (programs containing the history of all firms that bid the item and the levels they bid, as well as PASS history, i.e., all firms that passed on bidding the item), execution history and ticketing/operational history.

When an MSBB acts as middleman, traders for selling and buying firms do not communicate with each other directly; all communications are with and through the MSBB. An MSBB acts as a confidential agent on behalf of a counterparty in the sale or purchase of bonds in order to prevent competing firms from discerning each other's trading strategies. The MSBB collates the bids and reports the best one to the potential seller, who may decide to sell them if the price is acceptable; MSBBs do not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed or determine the timing of a trade. An MSBB effects a trade between market participants by contemporaneously selling to the buyer and buying from the seller as a disclosed agent; all MSBB trades are equally matched transactions. All decisions are made by the seller or the buyer and the MSBB facilitates the trade. Only if the trade is done does the MSBB earn a commission.

After a municipal bid-wanted trade is executed, an MSBB provides the purchasing counterparty with information about the total number of bids received and about the cover bid, which is the next best bid after the level at which the bond traded. This is important information for dealers to have in assessing the depth of the market and the risk involved in bidding or offering bonds at particular levels. This information also permits trading desks to quote markets with greater certainty and, presumably, at lower spreads, increasing secondary market liquidity and the ability for investors to sell their bonds. With the information flow and access to the MSBBs' extended distribution network, trading desks can spend less time soliciting interest in bonds they want to buy or sell (with its potential negative market effect) and more time executing trades for their proprietary accounts or their customers. For traders, the timesaving element of working with MSBBs may make the difference between executing or missing a trade as well as obtaining a timely interdealer market price on their securities.

The advantage that MSBBs have in the market is their continuous communication with the dealer community or "Street." The MSBB has a "picture" of who owns what and tracks closely who is inclined to buy, as well as who might want to sell into the market on any given day. The anonymity MSBBs provide to their counterparties makes them more willing to give MSBBs information. Buyers and sellers look to them for information on the tone and direction of the market, and it is the MSBB's job to sense that tone and direction and be able to communicate it to their clients.

MSBBs often acquire knowledge of the various sectors of the municipal bond market, knowledge that individual dealers/banks may not have developed. It takes a considerable amount of effort, expense, and determination for an MSBB to acquire sufficient knowledge of any local market,

such as that of the Midwest region, for example. An MSBB with great strength and knowledge of their region and specialty types of bonds, contributes greatly to the efficiency of the associated markets, thus helping to lower interest rate costs to both local investors and local issuing communities. Brokering is much more than quoting rates, it is a complex and highly professional business that ultimately provides efficiencies to the overall market and all market participants.

Definition of Municipal Securities Broker's Broker

The Notice defines an MSBB as a "broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, or municipal securities dealers ("dealers") or holds itself out as a broker's broker." SIFMA believes that this definition does not sufficiently define what an MSBB is, or the limited nature of their business activities. SIFMA feels strongly that that the MSRB needs to adopt a concrete, accurate and complete definition of an MSBB, and proposes an alternative definition directly below. Further, SIFMA is unclear as to the purpose of the clause "or holds itself out as a broker's broker" and requests that this phrase be omitted from any final definition.[4]

SIFMA believes that MSBBs should be defined by the nature of the business that they conduct. In light of this, we offer the following definition:

> The term Municipal Securities Broker's Broker shall mean a broker, dealer or municipal securities dealer that:
>
> a) acts as a disclosed agent or riskless principal in the purchase or sale of municipal securities for an undisclosed registered broker, dealer, municipal securities dealer, Sophisticated Municipal Market Professionals ("SMMP"), or institutional counterparty;
> b) does not have or maintain any municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;
> c) executes equally matched transactions contemporaneously;
> d) does not carry any customer accounts; does not at any time receive or hold customer funds or safekeep customer securities;
> e) does not participate in syndicates;
> f) acts in the limited agency capacity of providing liquidity, market information, order matching, and anonymity through the facilitation of transactions in the interdealer market;
> g) does not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed, or determine the timing of execution; and
> h) is compensated by a commission, not a mark-up.

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4 We note that although the Notice offers the quoted definition "for the purposes of [the] [N]otice," SIFMA is concerned that this definition will become a de facto MSRB definition. This is why we have offered what we believe to be a more accurate and complete definition.

SIFMA believes that a function-based definition of MSBB is necessary to ensure that the Proposed Guidance, if adopted, is appropriately tailored to the uniquely limited nature of MSBB activities. As the proposed definition clearly indicates, MSBBs, whether they process a transaction as "agent" or "riskless principal," do not exercise any decision making authority in connection with transactions they effect. MSBBs act as limited agents, generally for the sellers of municipal securities, for the purposes of soliciting bids on those securities ("bid-wanteds") or for facilitating the execution of transactions for buyers or sellers ("situations" or "offerings"). MSBBs do not have authority to take any other action on behalf their clients. As described above, bid information is relayed back to the seller, so the seller can determine whether to trade the securities in question. If the seller should determine that it wants to sell the securities, the seller will inform the MSBB that the bonds are "for sale," and *only at that time* will the MSBB contact the high bidder to effect the transaction.

SIFMA believes that only by adopting a definition of MSBB along the lines of the one above can the Proposed Guidance be properly analyzed. With this definition in mind, SIFMA offers the following comments on the Proposed Guidance.

<u>Agent versus Principal</u>

The Proposed Guidance seeks to establish a bright line distinction between when an MSBB trades as an agent versus principal: if the securities transacted are held even momentarily by the MSBB, even if only in a "clearing or similar account," the transaction is deemed to be a principal transaction. Further, the Proposed Guidance states that this determination is applicable "for all MSRB rules, not just the uniform practice rules." Although SIFMA appreciates that this aspect of the Proposed Guidance is intended to clarify the MSRB's view of the nature of MSBBs' trading activities, we believe that it elevates form over substance, and that MSRB should continue its long-standing practice, as reflected in current Rule G-18, of considering the MSBB's special relationship with its trading counterparties, and the limited agency capacity in which it serves those counterparties, when applying its rules.

We note in this regard that even if the bright line approach to this issue is adopted, the vast majority of MSBBs transactions are *not* taken into any account of an MSBB. These transactions are effected on a continuous net settlement basis through the National Securities Clearing Corporation Continuous Net Settlement System (the "CNS System"), where the transactions are matched between seller and buyer, and the commission to the MSBB is netted out during the settlement process.[5] In addition, most MSBBs operate as fully-disclosed introducing broker-

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[5] These transactions are reported as "principal transactions" in the Real-Time Reporting of Municipal Securities system, because they are inter-dealer transactions, and the system when implemented did not include this functionality. *See* MSRB Notice 2003-03, "Plans for MSRB's Real-Time Transaction Reporting System," (Feb. 3, 2003). *See also*, "Municipal Securities Rulemaking Board, Specifications for Real-Time Reporting of Municipal Securities Transactions," at § 1.31 (ver. 1.1 Sept. 2003) (current ver. 2.2 Nov. 2009, includes similar limitations in functionality).

dealers, and all transactions are cleared through the accounts of the clearing broker-dealer. No MSBB transactions appear to meet the definition of principal trade under MSRB Rules.[6] It may appear, however, that MSRB transactions could be defined as riskless principal transactions under MSRB rules.[7] We also note that the MSRB definition of "as agent" trades requires that the transactions are not processed through the account of the dealer, are charged a commission instead of a mark-up, and that the dealer disclose, or be willing to disclose, the identity of the other side of the transaction.[8] Anonymity, however, is one of the primary services that MSBBs provide to their trading counterparties, and is an important service to the market.[9] We believe that if an MSBB can maintain anonymity of seller and buyer without taking a security into its accounts, the transaction should be viewed as an agency transaction, in accordance with the special relationship it has with its trading counterparties.

MSBBs conduct their securities business in a manner that is consistent with an "agency" business under the traditional meaning of the term, without regard to how they process their transactions.[10] As described above, MSBBs act as *limited* agents on behalf of their trading counterparties, solely for the purpose of seeking bidders for the securities owned by their trading counterparties, and seeking executions of securities transactions on behalf of those counterparties. The Notice reflects this agency relationship by noting that MSBBs may have a "special relationship" with their dealer counterparties, which may create "agency or fiduciary obligations" from the MSBB to its dealer counterparty. However, unlike traditional agents, MSBBs' authority to act for their dealer counterparties is extremely limited. For example, the bid-wanted process is subject to the

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6 Principal Trade: A securities transaction in which the broker-dealer effects the transaction for its proprietary account. MSRB Glossary of Municipal Securities Terms, Second Edition (January 2004).

7 Riskless Principal Transaction: A transaction in which a broker-dealer, after having received an order to buy a security, purchases the security as principal to satisfy the order to buy or, after having received an order to sell, sells the security as principal to satisfy the order to sell. *Id.*

8 "As Agent" Trade: A securities transaction executed by a broker-dealer on behalf of and under the instruction of another party. The broker-dealer does not act in a principal capacity and may be compensated by a commission or fee (which must be disclosed to the party for whom it is acting) rather than by a mark-up. To function as a customer's agent, a broker-dealer must disclose or express willingness to disclose the identity of the other side of the transaction. *Id.*

9 "Trades are executed by the blind broker on an anonymous basis—i.e., without the disclosure to either dealer of the identity of the contra party at the time of the trade. . .[S]uch systems are designed to facilitate the execution of orders". Securities and Exchange Commission, "Proprietary Trading Systems," Release No. 34-26708, File No. S7-13-89 at 8 (April 11, 1989).

10 Agency: "Agency is the fiduciary relationship that arises when one person (a "principal") manifest assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." "Restatement (Third) of Agency," at §1.01 (2010). Agents operating under this standard have traditionally had the authority to legally bind their principals, which MSBBs do not.

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control of the seller. Sellers may direct that certain potential bidders not be contacted, or that only certain bidders may be contacted. Sellers also determine the time parameters of any bid-wanteds. Lastly, MSBBs do not have the authority to effect transactions for their clients at any price they find. Rather, they must return to the seller, and the seller makes the decision to sell, at which time the MSBB effects the transaction.

The only aspect of an MSBB's business that the MSRB has identified as resembling traditional principal transactions is the processing of those transactions which are actually settled through the clearing or other account of the MSBB, but we believe this distinction elevates form over substance. In all other respects, MSBBs act in the limited agency role described above. They do not maintain an inventory of securities for trading purposes and they do not determine whether a transaction will occur, or the price or time of any transaction. Nor can they profit themselves by marking-up a transaction with a counterparty. We believe that it is these conflicts of interest that underlie the principal trading rules.

For the reasons described above, MSBBs have traditionally treated their transactions for all purposes as agency transactions. In March 2001 MSRB stated its position that MSBB transactions should be treated as riskless principal transactions for its Uniform Practice Rules.[11] Subsequent to this, when the MSRB implemented its Real-Time Transaction Reporting System, the system did not allow for the reporting of interdealer transactions as being done by agent.[12] We believe that the way to remedy this issue is to modify the trade reporting systems to allow the reporting of inter-dealer transactions effected on an agency basis.

Based upon the foregoing, SIFMA believes that MSRB should continue its practice, as reflected in the current text of Rule G-18, of applying its General Rules to MSBBs in a manner reflective of the limited nature of MSBBs' business, and not proceeding from a mechanical application of those rules based on the manner in which transactions are processed.

Rule G-18

The Proposed Guidance regarding Rule G-18 not only provides additional guidance to help MSBBs in meeting their obligations under Rule G-18, but also substantially modifies the current rule. SIFMA generally supports the additional guidance, but does not support the expansion of Rule G-18 beyond its terms, and further believes that if the MSRB wishes to so expand Rule G-18 it should do so through the normal rule amendment process, with due consideration given to amending the rule not only as it relates to MSBBs, but to all MSRB members.

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11 MSRB Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems (Mar. 26, 2001).

12 Municipal Securities Rulemaking Board, Specifications for Real-Time Reporting of Municipal Securities Transactions, *supra* note 5.

SIFMA supports the Proposed Guidance regarding the steps that may need to be taken in certain circumstances to ensure that the bid-wanted *process* is fair and reasonable. MSBBs currently undertake additional steps when they believe them to be warranted to ensure that they operate a fair bid-wanted process. These steps include seeking to contact the underwriter of an issue and/or prior known bidders on the issue, and similar measures to ensure that bid-wanteds are not only widely disseminated, but also exposed to likely interested parties. However, as currently drafted, the Proposed Guidance speaks in terms of what the MSBB "must" do to ensure a fair and reasonable process is conducted. As noted above, the entire bid gathering process is subject to the control of the seller, and the MSBB is bound to follow the seller's direction so long as such directions are not in contravention of any applicable rules. For this reason, we request that the Proposed Guidance be revised to make clear that these steps are not mandatory, but are suggestions for how an MSBB can meet its obligations.

SIFMA does not support the use of the Proposed Guidance to substantially amend Rule G-18. Rule G-18 currently requires that, in connection with their transactions for their dealer clients, MSBBs shall be under the same obligation to their dealer counterparties as are dealers when they conduct agency transactions with their customers, which is to "make *a reasonable effort* to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions." Rule G-18, by its terms, is a process-based rule, not an outcome-based rule. The Proposed Guidance modifies Rule G-18 to require that MSBBs, and only MSBBs, make a determination after the bid process has run its course as to whether the resulting highest bid is fair. In addition, if the MSBB is unable to determine that the price is fair, the MSBB would be required to notify its dealer-client in writing of that fact, and would also be required to receive written acknowledgement of this fact prior to effecting the transaction. Rule G-18 does not, and if it were to be amended by the Proposed Guidance as proposed, would continue to not require these actions be taken by dealers when acting with customers (including retail customers) in an agency capacity.

We believe that this proposal inappropriately places the primary burden of determining whether a transaction should occur on the MSBB, rather than on the sellers of securities. The MSBB's role in these transactions is to seek to provide their trading counterparties with information about the market for the securities in question at the time in question. The determination of whether a resulting high bid is fair, especially in a market as thinly traded as the municipal securities secondary market, [13] is inherently subjective, and is one which the seller is clearly in a better position to make, and which the MSRB requires that dealers make when acting as principal for their customers.[14]

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13 *See* SEC Report on Transactions in Municipal Securities (July 1, 2004), available at: http://www.sec.gov/news/studies/munireport2004.pdf. The report found that during the study period, about 70% of municipal securities did not trade, and less than 1% of securities accounted for half of the transaction activity.

14 *See* Regulation of Exchanges, *supra* note 3.

When dealers consider whether to trade a bond at a given price, dealers are focused on the market risk involved in establishing or terminating positions, as well as suitability concerns when dealing with customer transactions. The relevant factors for determining prevailing market price are not the same for every trade. For instance, dealers receive a variety of bid and offer information throughout the trading day, including information from interdealer brokers, dealer contacts, their internal research, market or credit analysts, and customers for securities. Dealers may receive this information orally or electronically (e.g., via facsimile, Bloomberg or other electronic messaging systems, or website access). Dealers view this quotation information as critical in assessing the current market price for a bond because it reveals the demand and supply for a particular security or type of security, which – according to basic economic principles – determines price. In some instances, this information may be more important than prior trades.

In addition, there are a myriad of reasons why prevailing market prices may deviate due to unquantifiable market forces. For example, on Day A, a dealer may get 5 bids on a bid wanted listing, with a high bid of 103.5 and a low bid of 101. On Day A, the bid side is established to be 103.5. The next day, Day B, no major market shift may have occurred, but the top two bidders for that type of security do not bid. The top two bidders may not have bid for any number of reasons, including they do not want to risk their capital that day, their portfolios are full with that name or type of credit, or their portfolios are full for that point in the yield curve. The bid side on Day B becomes 101. Liquidity ebbs and flows in the market, and is not constant. Liquidity for a particular securities issuance typically becomes thinner the older it gets. Liquidity for transactions that have recently been issued is fairly high, with a steep drop in liquidity as the issue matures.[15]

Another factor that determines market liquidity on a particular day is the level of supply of bonds. There have been a number of recent examples of leveraged counterparties needing to sell large amounts of bonds in the wake of collateral calls. In this scenario, it is not the securities that are distressed, but it is the seller that is distressed. In a market where supply greatly surpasses demand, the prevailing market price for securities will decrease until the level at which market participants are willing to commit investable capital.

We also note that dealers will often have as good or better a view of the day to day market variations described above than will an MSBB. Given that dealers have multiple sources of information, and typically employ a variety of research, market and credit analysts who are available to their traders, there is no reason to think that, as a general matter, an MSBB is in a better position than is the dealer to make a determination regarding fair market value. As stated above, dealers employ a variety of securities analysts, while MSBBs do not employ research, market, credit or other analysts. In the MSBB's role as auctioneer, the broker-dealer community does not look to MSBBs to provide those services. *In addition, the MSBB will never have any information regarding the dealer's client or the client's motivation for selling a security.* Given these facts, we believe that the dealer should be allowed to make its decision to buy or sell in a particular transaction based on the dealer's analysis of the information available.

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[15] *See* MSRB 2009 Factbook at 16 (2009).

We also believe that the proposed notice and acknowledgement scheme proposed for when an MSBB is unable to make a fair market value determination is unworkable. Given the fast paced nature of most bond trading desks, it is difficult (if not impossible) to imagine an MSBB and a dealer actually going through the steps of giving notice of the MSBB's inability to determine whether fair value has been achieved, and obtaining written acknowledgement of that disclosure outlined in the Proposed Guidance, *before the transaction is executed.* Given all of the market variations described above, and the extensive information and other resources that dealers have available to them, this market impediment seems unjustified, and potentially harmful.

SIFMA is concerned that the secondary market for municipal securities could be harmed because dealers may be discouraged from committing capital to the municipal securities secondary market, especially to lower-rated securities, retail-sized blocks and any security in a volatile market. Dealers will be less willing to buy securities for their own inventory or otherwise engage in trades that are not crossed internally due to the amount and timing of documentation for compliance purposes that may be required for each transaction. This impact will be heightened if, given all the market variations described above, MSBBs feel compelled to provide notice that they have not been able to make a fair market value determination. This risk is further heightened if dealers do not agree with the MSBB's conclusion that the bid offered cannot be concluded to be fair market value. Given how thinly traded the vast majority of municipal securities are, we believe that these potential risks greatly outweigh whatever the supposed benefit of this part the Proposed Guidance is intended to provide.

Should MSRB continue to pursue this aspect of the Proposed Guidance, SIFMA believes that it should be addressed in a separate rulemaking, and that additional information be provided to explain how these new requirements are intended to work in practice. For example, would an MSBB's dealer-client be free to trade a security with a customer based on a price that the MSBB was unable to determine was fair? If so, would the dealer be required to notify its customer in writing of the MSBB's inability to conclude that the price is fair and reasonable, and to obtain an acknowledgement from the customer? If the dealer-client cannot effect the trade with its customer, isn't the MSBB being forced to take on the dealer's client-protection responsibilities, without any information about the client? Lastly, what avenue would remain available for distressed sellers looking to liquidate municipal securities positions? Would they be barred from the market based on the MSBB's inability to make a fair price determination? We believe that issues such as these support the conclusion that Rule G-18 should not be amended in this manner, and that if such an amendment is to be considered, it should be vetted through the normal rulemaking process.

Transactions with Customers

The Proposed Guidance regarding transactions with customers does not appropriately reflect the limited and sophisticated nature of MSBBs' non-dealer counterparties. As indicated in the proposed definition of MSBB above, MSBBs effect transactions only with SMMPs and institutional investors. Given the sophisticated nature of these counterparties, SIFMA does not believe that subjecting these transactions to Rule G-30, and therefore prohibiting these counterparties from trading as they choose, is warranted.

SIFMA believes that MSBB's transactions with SMMPs should continue to be governed by the SMMP Notice published by MSRB in 2002.[16] In the SMMP Notice, the MSRB stated that for dealers in general, that if a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.

Based on the foregoing, any transaction between an SMMP and an MSBB that is effected without the securities being held in the MSBB's account, such as through the CNS System or by fully disclosed introducing MSBBs, would appear to be within the bounds of the SMMP Notice, and not subject to a transaction by transaction analysis under Rule G-30. Further, given the fact that an MSBB is only compensated by a commission on its transactions, and cannot benefit itself by marking-up securities, we believe that SMMPs should be allowed to decide whether it wants to trade with an MSBB even when the transaction is processed through a clearance and settlement account of the MSBB, so long as it is disclosed to the SMMP that the MSBB may process transactions either as riskless principal or agent. We believe that SMMPs should be allowed to continue to trade their securities as they see fit, and not be precluded access to the market in the manner they so choose.

SIFMA also believes that the definition of SMMP should be reviewed, to determine whether additional institutional investors should be accorded the same status as SMMPs. As we discussed in our June 7, 2010 letter to Ernesto Lanza commenting on MSRB Notice 2010-10, we believe the qualifications for institutional investors to be considered SMMPs should be modified. In the context of suitability interpretations, it is widely recognized that institutional and retail investors are qualitatively different,[17] and the threshold for determining an SMMP is very stringent. First, an SMMP must be an entity with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management. When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion, the institutional customer can be considered SMMP by the dealer.

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[16] Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002) (the "SMMP Notice").

[17] *Id.*

SIFMA feels a lower threshold is appropriate to establish that an institutional investor is an SMMP.[18] Many institutional accounts do, in fact, have the ability not only to assess the intrinsic value of particular debt securities, but also to evaluate independently the market for them. Certain institutional accounts that are active in the debt securities markets employ considerable in-house expertise evaluating potential investments — expertise that at times may be superior to those of bond dealers. These institutional customers include the asset management arms of virtually every multi-service financial services firm, large insurance companies, and hedge funds specializing in a wide range of liquid and illiquid municipal securities. These institutional customers also typically have sales and trading relationships across several investment banks, regularly possess internal research departments with specialized knowledge of the industry sectors in which they invest, direct contact with issuers and obligors, and have access to their own capital in addition to the capital in the dealer market. They also have access to information from multiple dealers as well as trading screens on which they may do comparative requests for quotations among their dealers.

Based on the foregoing, we believe that many institutional investors that do not meet the definition of SMMP should be accorded greater trading flexibility than would be afforded a retail investor whether by amending the SMMP standards or by recognizing that many institutional investors that do not meet the SMMP standards are still very sophisticated. In this connection, SIFMA suggests that a notice and acknowledgement scheme such as proposed for Rule G-18 transactions might be appropriate in this case. We believe that implementing such a scheme here, as opposed to under Rule G-18 for MSBB-dealer transactions, would appropriately balance an institutional investor's need for protection with its right to access the markets on terms that it deems appropriate, once they have been put on notice by the MSBB regarding its inability to determine whether a potential trade price is fair and reasonable.

Rule G-17

SIFMA agrees with the Proposed Guidance's statement that, like all other municipal securities dealers, Rule G-17 applies to MSBBs, and that all dealers have an obligation not to act in "any unfair, deceptive or dishonest manner" in the conduct of their securities business. Below we discuss each point of the Proposed Guidance as it relates to Rule G-17.

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[18] We note, for example, that Section 2(a)(51) of the Investment Company Act of 1940 defines a "qualified purchaser" to have an investment portfolio of at least $5 million for an individual or at least $25 million for a corporation, partnership or other entity.

MSBBs and Non-Dealer Counterparties

The Proposed Guidance states that MSBBs that have customers (which we understand to mean non-dealer counterparties that are institutional investors or SMMPs), must disclose this fact to both sellers and bidders in writing. While SIFMA agrees with this in principle, we believe that it is important to make clear that this requirement can be met in a variety of ways, such as at the time a dealer or non-dealer counterparty relationship is initiated, through website disclosure, or through a written communication to all counterparties that may include other important information, and that MSBBs should be free to choose to make this disclosure in whatever mode is suitable for their business.

The Proposed Guidance also states that MSBBs that have non-dealer counterparties must also put information barriers in place to ensure that they "are not provided with information about securities of other clients, including the ownership of such securities and information about bids (other than the winning bid that is reported to the MSRB)." While SIFMA agrees that counterparty-specific identification information should not be shared with other counterparties, this provision also appears to prohibit any market-related communication from an MSBB to a counterparty.

SIFMA is especially concerned that a broad restriction on MSBBs sharing market related information with counterparties may lead to a bifurcation of the municipal securities secondary market, as it relates to counterparties dealing through MSBBs versus other dealers. SIFMA strongly believes that the standards on communications should be the same for both MSBBs and dealers, and that the guiding principle should be that all market participants should have access to information needed to allow them to make informed decisions, thereby promoting full access, transparency and fair play in secondary markets.[19]

For example, we do not believe that an MSBB or a dealer should ever provide to a trading counterparty information about what another market participant is doing, if the sharing of such information would allow the trading counterparty to ascertain the identity of the other market participant or its proprietary trading information.[20] However, we do believe that sharing information about what similar securities have recently traded for, or may be currently bid at, is useful information that can allow the counterparty to make informed buy/sell decisions.

If the intended purpose of this provision is to prohibit all market communications, it is unclear to us how such a prohibition aids the operation of a fair and transparent market, or could be fair to market participants. Further, this prohibition appears to put customers of dealers in a superior position to counterparties of MSBBs, which also seems contrary to the goal of fair treatment of

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[19] "Market transparency and access to information is fundamental to a fair and efficient market." "The MSRB Protecting Investors and the Public Interest," available at: http://msrb.org/Publications/~/media/Files/MISC/TheMSRBProtectingInvestorsandthePublicInterest.ashx.

[20] We believe such a standard is consistent with MSRB Rule G-24.

all market participants. Lastly, SIFMA is concerned that such disparate treatment of counterparties based on their status is contrary to the principles of Rule G-17.

Self-Dealing

SIFMA agrees with the Proposed Guidance's position that sharing of non-public information (including information about bids) between a non-MSBB affiliate (or corporate division, if the MSBB is part of a larger corporate entity) and an MSBB that is purchasing securities for the MSBB's own account (as opposed to the account of the highest bidder) constitutes self-dealing, without regard to whether the trade is done directly, or by interpositioning another dealer in the process. SIFMA further believes that an MSBB should *never* trade securities for its own account, and our proposed definition above incorporates this prohibition. A broker's broker that trades for its own account is not, in our view, an MSBB. We believe that not including such a prohibition in the definition can only lead to confusion about the appropriate roles of MSBBs.

Bid-Wanteds and Situations

SIFMA agrees with the general principle stated in the Proposed Guidance that bid-wanteds and situations must be conducted in a fair manner, and that absent clients' permission to represent both sides of a transaction, they must not take any action that works against a client's interest. However, we are concerned that the specific prohibitions on communications to bidders are overbroad, and would impede the conduct of efficient processes to the ultimate detriment of all market participants, as described below.

We believe that communications during bid-wanteds and situations should continue to be judged on a case-by-case basis, and not by attempting to prohibit various types of communications. The MSBB should be free to manage the process to avoid, for example, the acceptance of clearly erroneous bids, as this appears to be required under Rule G-13.[21] MSBBs would know that in exercising this judgment as to when to intervene in a bid process they will be judged under Rule G-17.

We also believe the proposed prohibition against letting bidders know where they stand in the bid process is unnecessarily restrictive. Bidders routinely seek information after the "sharp" deadline for bids on whether their bid is likely to be used in a specific bid-wanted, so that they can determine whether the capital represented by their bid is likely to be used for that transaction. This is a long-standing industry practice expected by the broker-dealer community. If, after the sharp deadline, a bidder is clearly out of contention for a bid-wanted, that firm may decide to participate in another bid-wanted to continue to try to put their capital to work. These types of

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[21] Notice of Interpretation of Rule G-13 on Published Quotations (April 21, 1988), *reprinted in* MSRB Rule Book, available at http://www.msrb.org/msrb1/rulesmotg13.htm. SIFMA also notes that if MSBBs are unable to intervene in cases of obviously erroneous bids, incorrect information about market value of securities would be reported and disclosed to EMMA, and ultimately could result in customers paying in excess of fair market value. In these situations, FINRA arbitration is almost a certainty.

communication appear to generally benefit all market participants, and foster efficient capital deployment. We note that it is a generally accepted practice that once a bidder receives information consistent with that described directly above, the bidder may not change its bid.

SIFMA is generally supportive of the prohibition against bidder-specific communications other than those described directly above, including communications related to the price offered by the bidder (directions to "review" the bid, or that it is "sticking out"), subject to the following limitations. First, MSBBs should be free to provide non-bid specific market information to bidders at any time, including during a bid-wanted process. Second, as mentioned above, MSBBs should be allowed to contact a bidder when, in the MSBB's judgment the bid submitted is clearly erroneous. Given the limited nature of these communications, we do not believe that there should be a requirement to notify all bidders to give them the opportunity to adjust their bids. We also are concerned that should a requirement to contact all bidders in a bid-wanted be imposed, this could lead to unintended consequences to the detriment of the auction process.

SIFMA believes that these communications issues may be better addressed by a disclosure to an MSBB's counterparties describing the MSBB's bids-wanted communication policies. Such a disclosure could include the MSBB's policies on all of the points discussed above, and any other points the MSBB deems relevant. Such a disclosure scheme could allow the MSBB's prospective counterparties to decide for themselves whether they wanted to conduct business with an MSBB given its communications policies. Lastly, we note that MSBB's communications during a bid-wanted process would still be subject to the general Rule G-17 standard stated in the Proposed Guidance.

Bid-Related Issues

SIFMA agrees with the Proposed Guidance that it is inconsistent with Rule G-17 to submit fake cover bids, to adjust a bid without the bidder's knowledge, to fail to inform the selling dealer of the highest bid, to accept bids after a sharp bid deadline, or to submit fictitious trade prices.

<u>Recordkeeping/Record Retention</u>

SIFMA agrees with the Proposed Guidance's provisions addressing Rules G-8 and G-9, requiring MSBBs to keep records of all bids (including "quick answer" bids), together with the time of receipt, for at least three years, and prohibiting records of bids from being overwritten (e.g., when new bids are entered).

* * *

We wish to thank the MSRB and its staff for their work in developing the Proposed Guidance and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposed Guidance. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Respectfully,

Leslie M. Norwood
Managing Director and Associate
General Counsel

cc: Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Broker's Brokers Committee
Municipal Legal Advisory Committee
Municipal Syndicate and Trading Committee

November 10, 2010

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria VA 22314

Comments to Notice 2010-35

Dear Ms. Henry:

TheMuniCenter, L.L.C. ("TMC") is pleased to respond to the Municipal Securities Rulemaking Board ("MSRB") Notice 2010-35, Request For Comment on MSRB Guidance on Broker's Brokers. TMC is an electronic exchange for trading fixed income securities. Started in May of 2000, TMC has grown to become a leader in facilitating electronic trading of fixed securities over its open and anonymous platform. Over 250 firms trade daily on TMC, averaging approximately 2,200 municipal transactions. In 2009, TMC had almost 250,000 Bids Wanted totaling nearly 33 Billion in par amount.

TMC supports the efforts by the MSRB to define more clearly the rules for the Bids Wanted process; however, we have concerns with the MSRB's understanding of how a broker's broker operates, especially with respect to the limited nature of the information that is made available to a broker from a client firm when executing a transaction

Rule G -18 – Brokers cannot use same level of care as a dealer to determine fair price
G-18 states "The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account". This standard is not appropriate to apply to a broker, as the broker does not always know the client or the parameters of the transaction. A dealer has the relationship with the client and thus understands the fact and circumstances of the possible sale. With this information, the dealer makes a decision as to the timing and duration of the Bids Wanted process. For example, an unusually short auction process may be appropriate if the dealer has arranged a swap on the other side. Lower priced bids would be expected by the dealer, which could be acceptable given the parameters. The dealer dictates these parameters to the broker, along with the specifics of the auction itself, such as bidding in competition or open bid period. A broker's responsibility is to carry out the auction process to

the best of its abilities, given the conditions specified by the dealer. Thus, the dealer needs to make the final determination of fair pricing, and the obligation of the broker should be to run the auction process with the same care as if for its own account. By our estimate, the broker's market supports over 3,000 bids wanted daily. It is overly burdensome to require participants to sign written waivers for exceptions. If the regulation were modified to fit the natural process, than written waivers would only be required for aberrations. The responsibility of a broker should be to maintain a fair process for both parties and to request written disclosure for exceptions.

Rule G -17 – Broker to conduct auction in a fair manner for both buyer and seller
The notion in the Proposed Guidance that the broker "must not take any action that works against the client's [i.e, the seller's] interest...subject to the ability of both the seller and the bidder to agree in advance of a transaction that the broker's broker may represent the interest of both the seller and the bidder" is inconsistent with market practice. The broker should always represent both sides of a brokered transaction, and the standard of fair dealing should apply to the auction process rather than to a single party to the transaction. The language should state that the presumption is for the broker to represent both sides, unless stated in writing that the broker is representing the buyer or the seller. As a neutral intermediary, the broker should seek to conduct an auction process that is fair to all participants while helping to find a fair market price. As an auction agent, the broker has the responsibility to both parties that the auction is carried out according to the specified terms. Favoring one party over the other can ultimately put a retail client at risk.

Rule G -13 – If a broker is distributing a quotation on behalf of another dealer, such broker shall have no reason to believe that the price stated is not based on best judgment of the fair market value.
The Proposed Guidance states that "directions to a specific bidder that it should "review" its bid", etc. are prohibited. However, if a broker is conducting an auction in a fair manner (in accordance to Rule G-17), we would suggest that the broker's broker has an equal responsibility to both the buyer and seller as directed by the spirit of the language in that rule. As a neutral intermediary, the broker should seek to conduct an auction process that is fair to all participants and to find a fair market price. For reasons noted above, it is more difficult for a neutral intermediary to assess price levels than for a dealer, but access to bid information from multiple qualified participants helps with price discovery. If it appears (for example) that a firm has mistakenly transposed a number and is materially away from the market, the broker under G-13 should be able to notify the bidder. It is not in the best interest of the market to allow dealers to execute at off market levels.

The Proposed Guidance also points out that accepting "bids after a bid deadline" is "deceptive, dishonest, and unfair". Market practice, however, is such that many bids wanted are submitted without deadlines, but instead with "around" times; in other words, bidders are encouraged to

bid without constraints as to deadlines. In such cases, there are no "late bids". However, in an auction with a firm deadline, the notion of fair practice would dictate that a broker notify a dealer of an off-market bid, and the dealer would not be allowed to rebid if the discovery is made after the bid time. In such cases, allowing such bids may in fact be appropriate, as the market could benefit from another bona fide bid. It could also be unreasonable to re-run the auction process if the mistake mentioned above is discovered in a timely manner and if the market has not moved materially. Due to the high volumes of Bids Wanteds, traders do not have the time to re-bid, and may even not bid if an item is out for bid repeatedly. The idea of re-bidding could negatively affect the price of the item out for the bid. Regulation should support price discovery, not discourage it, and having brokers check prices promotes market efficiency by enabling traders to bid without fear of being "picked-off". As long as the auction terms are clearly defined, dealers and clients support this model and feel confident bidding. The standards of fairness, reasonableness, and materiality have all been used in the current guidelines and are dictated by the facts and circumstances of the market at the time of trade. Any "checking" of bids should be documented for their reasons of notification.

Thank you for giving us the opportunity to respond.

Sincerely,

Thomas S. Vales
Chief Executive Officer

Wolfe & Hurst Bond Brokers, Inc.
30 Montgomery Street
Jersey City, New Jersey

November 5, 2010

Peg Henry, Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2010-35: Request for Comment on MSRB Guidance on Broker's Brokers

Dear Ms. Henry:

Please accept this letter as the response of Wolfe & Hurst Bond Brokers Inc. (hereinafter "the firm") to the Municipal Securities Rulemaking Board's (hereinafter "MSRB") Notice 2010-35: Request for Comment on MSRB Guidance on Broker's Brokers ("Proposed Guidance"), dated September 9, 2010. The firm is concerned that the MSRB has a number of misconceptions regarding the role of a broker's broker in the municipal securities market. These misconceptions have lead to the development of impractical, inefficient proposed rules that do not ultimately serve the interests of the customers the regulatory bodies intend to protect. As discussed in further detail below, many of the provisions in the Proposed Guidance may be applicable to broker-dealers but cannot similarly be applied to broker's brokers. The firm strongly suggests that the MSRB recognize a clear distinction between broker-dealers and broker's brokers and amend its Proposed Guidance accordingly. Elimination of this distinction will ultimately lead to the demise of the true broker's broker and their important function in the market.

The Rules of the MSRB should reflect a more expansive, function-based definition of a broker's broker. As discussed further below, the Rules should be tailored to the role of a broker's broker as an agent instead of as a principal in a securities transaction. Moreover, it must be noted that a true broker's broker is an intermediary and does not effectuate transactions directly with customers and therefore MSRB Rule G-30 never applies. In addition, a broker's broker should not be responsible under Rule G-17 for ensuring that all material information has been disclosed to the dealer's customer. These responsibilities belong to the broker-dealer.

While it generally supports the response to the Proposed Guidance filed by the Securities Industry and Financial Markets Association ("SIFMA"), the firm notes that it does not effect transactions with *any* customers, including institutional investors or sophisticated municipal market professionals ("SMMP's"). The firm believes that a true broker's broker cannot effectuate transactions with such counterparts and that the MSRB's definition should be so modified. The use of a business model by broker's brokers which authorizes transactions with institutions and SMMP's permits unfair dealing and should be prohibited.

I. The Definition of a Broker's Broker in the Proposed Guidance is Insufficient

The Proposed Guidance defines a broker's broker as a "broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, and municipal securities dealers ("dealers") or that holds itself out as a broker's broker." This definition is deficient and fails to adequately define the role and responsibilities of a true broker's broker.

A broker's broker has a very limited and unique role that is essential to the securities market. A true broker's broker acts solely as an intermediary agent on behalf of a broker-dealer or dealer bank in effectuating contemporaneously matched debt securities transactions. A broker's broker does not do business with customers as defined by the MSRB. Moreover, a broker's broker does not maintain customer or proprietary accounts, or position securities. Thus, a broker's broker never acts as a "dealer" for it's own account.

The definition set forth in the Proposed Guidance is so limited in scope that it does not accurately depict the essential role of a broker's broker in the securities market. Broker's brokers play an important role in providing liquidity, efficiency, transparency and access to the market. The firm recommends that the MSRB amend its proposed definition to reflect the broker's broker unique role in the market.

II. A Broker's Broker Should be Considered an Agent of its Clients: Broker-Dealers and Dealers Portions of Banks

The Proposed Guidance provides that a "broker's broker effects principal transactions for dealer clients." According to the MSRB, the transactions of a broker's broker are considered principal transactions despite its agency relationship with one party. The firm strongly disagrees with this assessment. The Proposed Guidance notes that a principal transaction is effectuated by a broker's broker when it "...takes a position in a security sold by its dealer client, even if such position is solely in the clearing or similar account of the broker's broker and regardless of the length of time such position is held..." According to the MSRB, a position is taken in the securities when a broker's broker preserves the anonymity of the seller and the buyer through the clearing and settlement process.

The MSRB's stance in this regard does not consider the true function of a broker's broker. A true broker's broker does not act as a principal in the purchase or sale of municipal securities. As defined by Section 3(a)(5)(A) of the Securities Exchange Act of 1934, a dealer is "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise." Section 3(a)(4)(A) of the Act defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." Thus, a broker-dealer is a firm engaged in the business of buying and selling securities for his own account or for the account of others. A broker's broker, however, acts as an intermediary between broker-dealers and dealer portions of banks in effectuating the purchase and sale of securities. Acting in this limited capacity, a broker's broker does not participate in the decision to buy or sell bonds nor does it exercise discretion as to the price or time at which a trade is executed. At all times the broker's brokers client controls the transaction and sets the parameters for the auction in a bidwanted. As agent, the broker's broker cannot complete a transaction without prior approval from the broker-dealer. Thus, a broker's broker acts as an agent for the broker-dealer, or principal, in the transaction. As such, a broker's broker has an obligation to act in the broker-dealer's interest and not to act for its own account.

Moreover, a municipal broker's broker does not maintain securities in its account or hold securities for clients. Indeed, it is specifically barred from doing so by SEC Rule 15c3-1(a)(8)(ii). All transactions must be contemporaneously matched to ensure that the firm is not in possession of securities. Prior to effectuating a transaction, the broker's broker ensures that both the selling broker-dealer and buying broker-dealer have bound themselves to the deal. Thus, a broker's broker cannot be considered to position securities or to be involved in principal transactions since it only facilitates a pre-approved transaction between the selling broker-dealer to the purchasing broker-dealer. The mere fact that securities pass through a clearing account should not negate the true agency function of a broker's broker.

The distinction between a broker's broker and a broker-dealer, or an agent and a principal, is critical and should be incorporated into the Proposed Guidance. A "broker's broker" that maintains securities or exceeds the scope of an intermediary in a municipal bond transaction as discussed above should not be permitted by the MSRB a) to hold itself out as a broker's broker or b) to register as a broker-dealer acting solely in the capacity of a broker's broker. The firm further suggests that the regulatory bodies not only recognize a distinction between broker's brokers and broker-dealers but also allow broker's brokers to report all of their transactions as agents.

III. Broker's Brokers Do Not Deal With Customers as Defined by the MSRB, Including Institutions and SMMP's

The Proposed Guidance provides that the MSRB acknowledges that some broker's brokers may effect occasional transactions with customers and that Rule G-30 applies if such transactions are principal transactions. The MSRB Rules define a customer as, "any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities." As an intermediary agent involved in the purchase and sale of debt securities on behalf of principal broker-dealers and dealer portions of banks only, a true broker's broker has no customers as defined by the MSRB Rules. A broker's broker does not deal with the public or institutions, and is never involved in retail transactions. All of the clients of a broker's broker are Financial Industry Regulatory Authority ("FINRA") member broker-dealers and dealer banks and are deemed to be sophisticated.

A broker's broker does not do business directly with the broker-dealer's customers and Rule G-30 should not be applicable to the broker's broker. This is especially true since the broker's broker has no ability to determine that the price is "fair and reasonable in relation to prevailing market conditions." A broker's broker acts strictly in the capacity of an auctioneer that seeks the highest bids for the selling broker-dealer, or principal. Acting in this manner, the broker's broker does not have access to necessary information regarding it's clients customer and thus should not be given the responsibility for determining whether the winning bid obtained in a bid-wanted auction results in a fair and reasonable price. The broker-dealer must ultimately bear the responsibility for determining whether accepting the highest bid obtained is in the best interest of the broker-dealer's customers. Based on these circumstances, a broker-dealer should have the responsibility under the MSRB Rules for assessing the credit risk of a security and providing its customers with material information that would affect price or yield and be relevant to a reasonable investor. A broker's broker should never be subject to Rule G-30.

IV. Broker's Brokers Obtain and Disseminate Bids But are Not Responsible for Making Fair and Reasonable Price Determinations Pursuant to MSRB Rule G-18

Rule G-18 states, "Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions." This provision is also meant to apply to broker's brokers acting as an agent for a dealer. It is noted by the MSRB that Rule G-18 is considered satisfied by broker's brokers through bid-wanted auctions.

The firm contests the applicability as noted in the Proposed Guidance of Rule G-18 to broker's brokers. Rule G-18 applies when a broker, dealer, or municipal securities dealer acts for or on behalf of a customer as agent. As noted above, a broker's broker does not have customers as defined by the MSRB and thus at no point acts "for or on behalf of a customer." Therefore, the obligation under Rule G-18 to ensure that a fair and reasonable price is provided to the customer should not apply to a firm acting <u>solely</u> as a broker's broker. The firm, however, acknowledges its obligation to conduct a fair and reasonable process in a bid-wanted auction by seeking out the highest bids for a selling dealer through the extensive dissemination of a bid-wanted (*cf.* comments from the Brokers Advisory Committee in a publication of the Securities Industry and Financial Markets Association ("SIFMA") entitled *The Role of Interdealer Brokers in the Fixed Income Markets* at page 4 stating, "IBD's almost never know what the execution price will be and they necessarily must work to find the best acceptable price to the buyer and seller, in the hope of earning the right to facilitate that trade.").

The Proposed Guidance provides that a broker's broker has a duty to obtain and disclose information regarding the fair market value of the securities and to ensure that its recommendations are suitable for customers. As discussed above, a broker's broker acts as an auctioneer on behalf of broker-dealers and the dealer portion of banks, which are both deemed to be professionals by FINRA. The broker's broker does not opine as to the fair market value of the securities but rather appropriately relies on the quotation/bid provided by the broker-dealer or dealer portion of a bank on behalf of which the broker's broker acts.

This point is further emphasized through Rule G-13(b)(ii), which provides, "If a broker, dealer or municipal securities dealer is distributing or publishing a quotation on behalf of another broker, dealer, or municipal securities dealer, such broker, dealer, or municipal securities dealer shall have no reason to believe that the price stated in the quotation is not based on the best judgment of the fair market value of the securities of the broker, dealer or municipal securities dealer on whose behalf such broker, dealer, or municipal securities dealer is distributing or publishing the quotation." Pursuant to Rule G-13, a quotation is defined as "any bid for, or offer of, municipal securities, or any request for bids for or offers of municipal securities, including indications of 'bid wanted' or 'offer wanted'." It is the responsibility of the principal broker-dealer to ascertain and disclose information relative to the fair market value of the securities as well as to ensure that recommendations made to its customers are suitable. This position has been reiterated by the MSRB in the context of the applicability of Rule G-19 and G-30 to transaction chains in its January 26, 2004 publication which provides, "It should be noted that, in either case, the dealer retains the ultimate responsibility to its customer to ensure that the customer's price is reasonably related to market value." Moreover, the MSRB's April 30, 2002 Notice indicates that a broker's broker effecting agency transactions for other dealers could satisfy it's G-18 responsibility regarding fair and reasonable prices if it's services were

"...explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed."

It is not practical to place the responsibility of determining fair market value on a broker's broker. A broker's broker cannot verify whether a given price is reasonable to a particular customer or assess the suitability of a security for the broker-dealer's customer since the broker's broker does not have access to the broker-dealer's New Account Form, which contains, among other things, the customer's identity and information regarding the customer's investment goals and risk tolerance. The broker-dealer must be solely responsible for informing its customer if it has been unable to determine a fair and reasonable price for the security. Additionally, since it is possession of material information regarding the customer, the broker-dealer should be exclusively responsible for determining whether a given security should be recommended to its customer. Thus, a broker's broker should disclose the highest bid obtained to the broker-dealer who in turn is responsible for ensuring that the price is reasonably related to the fair market value of the securities at issue. A broker's broker, acting as an agent for a broker-dealer or the dealer portion of a bank, should not be responsible for obtaining or disclosing the fair market value of a security.

V. Broker's Brokers Should Not be Responsible for Providing the Broker-Dealer's Customers with Material Information Pursuant to MSRB Rule G-17

Rule G-17 states, "In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." An MSRB publication dated July 14, 2009 provides that Rule G-17 requires dealers to disclose material information to its customers regarding the municipal securities involved in a given transaction. Notably, the MSRB's May 30, 2007 publication discusses the responsibility of a dealer to ensure that it has "reasonable grounds" for believing a municipal securities transaction is suitable for recommendation to its customer. The Proposed Guidance reiterates the MSRB's position that some broker's brokers have customers. As discussed above, a true broker's broker does not have customers and the Proposed Guidance should be amended to reflect this fact. Accordingly, the broker's broker should not be required to determine whether a given transaction is suitable for a broker-dealer's customer nor should it be responsible for ensuring that all material information has been disclosed to the dealer's customer.

The firm further contests the MSRB's Proposed Guidance regarding preferential treatment to bidders in bid-wanteds. The firm recognizes it's responsibility under G-17 to refrain from providing "last looks," cover bids and from altering bids without informing bidders and sellers. However, the firm maintains the position that it is not engaging in preferential treatment by asking a bidder in a bid-wanted to check their bid where it was clearly submitted in error. In taking this action, the broker's broker ensures that the bid of the likely buyer is bona fide and accurate as put forward, however, it does not advise the broker-dealer regarding the fair market value or otherwise opine as to the bid itself. In essence, the broker's broker is protecting the integrity, transparency and efficiency of the market. Thus, interpreting Rule G-17 to require a broker's broker to provide all bidders the opportunity to adjust their bids is inefficient and unworkable.

VI. Concluding Remarks

In sum, a broker's broker does not act as a principal in municipal securities transactions, maintain or position securities, or act for its own account. A broker's broker acts as an intermediary agent on behalf of a broker-dealer or the dealer portion of a bank and does not deal directly with customers as defined by the MSRB. Since it does not have any customers, a broker's broker should not be liable under Rule G-18 for ensuring that the fair market value of the securities is provided to the broker-dealer's customers. Moreover, a broker's broker should not be responsible for ensuring that all material information is disclosed to the broker-dealer's customers or that its recommendations are suitable for the broker-dealer's customers. As it is required to possess information regarding its customer's identity and investment needs, the broker-dealer is in the position to disclose information related to the fair market value of a security as well as to assess whether a securities transaction is suitable for the customer. For all of the reasons discussed, it is this firm's position that a broker's broker should be considered distinct from a broker-dealer by the MSRB and other self-regulatory organizations. The Securities Exchange Commission ("SEC") previously permitted registration as a broker's broker. The SEC and other regulatory agencies should once again permit firms doing business as true broker's brokers to register as strictly broker's brokers rather than as broker-dealers acting in the capacity of broker's brokers.

Regulatory agencies must acknowledge not only the distinction between broker's brokers and broker-dealers but also the benefits that the broker's brokers offer to the bond market. Broker's brokers operate with limited liability and reduced capital in order to offer a unique service to the market. Particularly in times of market stress, bond broker's foster liquidity, improve market efficiency, and posses the distinctive ability to identify interested dealers and arrange trades. Rather than imposing impractical regulations on the broker's broker, regulatory bodies should strive to foster this specialized service, which enhances the market and ultimately provides investors with liquidity and therefore incentive to continue investing in the bond market.

We appreciate the opportunity given to the firm by the MSRB to comment on this Proposed Guidance and welcome further discussion on the issues addressed.

Sincerely,

O. Gene Hurst

[legal/wolfehurst\msrb\msrbresponse\MSRBResponsetoRequestforCommentNotice2010-35]

Wolfe & Hurst Bond Brokers, Inc.
30 Montgomery Street
Jersey City, New Jersey

November 29, 2010

Peg Henry, Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2010-35: Request for Comment on MSRB Guidance on Broker's Brokers

Dear Ms. Henry:

Please accept this brief supplemental response on behalf of Wolfe & Hurst Bond Brokers Inc. (hereinafter "the firm") to the Municipal Securities Rulemaking Board's (hereinafter "MSRB") Notice 2010-35: Request for Comment on MSRB Guidance on Broker's Brokers ("Proposed Guidance"), dated September 9, 2010.

The firm reiterates its position that the MSRB should define a broker's broker as an intermediary exclusively working for broker-dealers and dealer portions of banks. To permit a broker's broker to engage in securities transactions with sophisticated municipal market professionals ("SMMP's") and institutional counter-parties is contrary to the purpose of a broker's broker. A broker's broker acts as an intermediary agent and never transacts business directly with customers, as they have been defined by the MSRB. Allowing a broker's broker to transact business directly with SMMP's and institutions creates confusion rather than the transparency sought by the regulatory bodies. Broker's brokers must be relied on to provide a neutral, intermediary auctioneer-type role in the marketplace. To do so, broker's brokers must not be permitted to act in competition with broker-dealers by effectuating transactions with the broker-dealers customers, including SMMP's and institutional counter-parties. The goal of transparency in the market would be further bolstered if broker-dealers and regulators could be sure that broker's brokers are dealing strictly with broker-dealers and dealer portions of banks. If this were the case, the regulatory bodies could tailor the rules more clearly for broker's brokers thus enhancing the desired transparency and clarity in the market.

Furthermore, the MSRB's proposed rule requiring written disclosure if a broker's broker cannot determine "a fair and reasonable price...within a reasonable degree of accuracy," would create additional and unnecessary complexity not only to member firm's record keeping obligations and regulator's review but also to the broker-dealer community in assuring compliance in an already fast-paced environment. Generally, expanding the business model and related rules applicable to broker's brokers would require regulators to undertake additional and unnecessary auditing responsibilities on each and every transaction to ensure compliance.

Rather than expanding the business model for a broker's broker, the rules promulgated by the MSRB should reflect the limited nature of the broker's brokers business. To provide further clarity, the regulatory bodies should recognize a separate registration category for broker's brokers.

We appreciate your willingness to consider this response on this important issue.

Sincerely,

O. Gene Hurst

cc: Leslie Norwood, SIFMA
Members of SIFMA MSBB Committee

[legal/wolfehurst\msrb\msrbresponse\Second.Response.Request.Comment.Notice2010-35]

MSRB NOTICE 2011-18 (FEBRUARY 24, 2011)

REQUEST FOR COMMENT ON DRAFT RULE G-43 (ON BROKER'S BROKERS) AND ASSOCIATED AMENDMENTS TO RULES G-8 (ON BOOKS AND RECORDS), G-9 (ON PRESERVATION OF RECORDS), AND G-18 (ON EXECUTION OF TRANSACTIONS)

INTRODUCTION

The Municipal Securities Rulemaking Board ("MSRB") is requesting comment on draft Rule G-43 (on broker's brokers), as well as associated draft amendments to Rule G-8 (on books and records), G-9 (on records preservation), and G-18 (on execution of transactions). Under draft Rule G-43(e)(iii), a "broker's broker" means a broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, and municipal securities dealers ("dealers") or that holds itself out as a broker's broker. A broker's broker may be a separate business or part of a larger business.

Comments should be submitted no later than April 21, 2011. Comments should be sent via e-mail to CommentLetters@msrb.org. Please indicate the notice number in the subject line of the e-mail. To submit comments via regular mail, please send them to Ronald W. Smith, Corporate Secretary, MSRB, 1900 Duke Street, Alexandria, VA 22314. Written comments will be available for public inspection on the MSRB's web site.

Questions about this notice should be directed to Peg Henry, Deputy General Counsel, at 703-797-6600.

BACKGROUND

Both Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA") enforcement actions have highlighted broker's broker activities that constitute clear violations of MSRB rules.[1] The MSRB recognizes that some broker's brokers make considerable efforts to comply with MSRB rules. Given the nature of the rule violations brought to light by SEC and FINRA enforcement actions, however, the MSRB determined that additional guidance and/or rulemaking concerning the activities of broker's brokers was warranted.

The MSRB published a notice on September 9, 2010 (the "Notice") requesting comment on draft guidance on the application of existing MSRB rules to broker's brokers.[2] The MSRB stated in the Notice that some of the guidance might eventually take the form of a rule or rules. The MSRB received comments from seven commenters.[3] After reviewing the comments, the MSRB has determined to request comment on draft Rule G-43 and associated draft amendments to Rule G-8, G-9, and G-18, as an alternative to the draft guidance set forth in the Notice.

The principal provisions of the revised draft amendments are summarized below. This summary is followed by a discussion of the comments received on the draft interpretive guidance set forth in the

Notice. The MSRB considered the merits of the comments and made certain revisions to the proposal, as noted below.

SUMMARY OF DRAFT RULE G-43

Draft Rule G-43(a) sets forth the basic duties of a broker's broker. Draft Rule G-43(a)(i) incorporates the same basic duty currently found in Rule G-18. That is, a broker's broker must make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

Draft Rule G-43(a)(ii) provides that a broker's broker must not take any action that works against the client's interest to receive advantageous pricing. Under draft Rule G-43(a)(iii), the potential seller is presumed to be the client of the broker's broker in a bid-wanted (as defined in draft Rule G-43(e)(ii)), unless both the potential seller and the potential buyers (bidders) both agree in writing to dual representation. This presumption does not apply in the case of offerings (as defined in draft Rule G-43(e)(vi)).

Under draft Rule G-43(a)(iv), if the broker's broker believes that the highest bid received in a bid-wanted or offering does not represent a fair and reasonable price in relation to prevailing market conditions within a reasonable degree of accuracy, the broker's broker must disclose that fact to its client or clients, in which case the broker's broker may still effect the trade, if the client or clients acknowledge such disclosure in writing. This provision of the draft rule does not require that the broker's broker communicate with the client's customer. It also does not require the dealer client of the broker's broker to provide its customer with this disclosure. However, a dealer client that receives this disclosure from a broker's broker and wishes to accept the highest bid obtained by the broker's broker will need to satisfy itself that such bid is, in fact, a fair and reasonable price in order to satisfy its duty to its customer under Rule G-30, which requires that the price paid to the customer be fair and reasonable.

Draft Rule G-43(b) and (c) only concern bid-wanteds, not offerings. The Board determined that more detailed guidance on the conduct of bid-wanteds was warranted, because bid-wanteds are a very important component of secondary market liquidity for retail investors in municipal securities, and most of the violations found by the SEC and FINRA have involved bid-wanteds, rather than offerings.

Draft Rule G-43(b) provides that a bid-wanted conducted in a manner that satisfies the requirements of draft Rule G-43(c) will generally satisfy the obligation of a broker's broker under draft Rule G-43(a)(i) -- to make a reasonable effort to obtain a fair and reasonable price under prevailing market conditions. However, whether the bid-wanted actually satisfies this duty will depend on the specific facts and circumstances of the transaction, including whether the broker's broker has satisfied its duty of fair dealing under Rule G-17.

Draft Rule G-43(c) provides rules for the conduct of a bid-wanted that a broker's broker must comply with if the broker's broker is using the bid-wanted to satisfy its duty under draft Rule G-43(a) (*i.e.*, to make a reasonable effort to obtain a fair and reasonable price under prevailing market conditions). These provisions are designed to increase the likelihood that the highest bid in the bid-wanted is fair and reasonable. Many of the requirements of draft Rule G-43(c) address behavior that would also be a violation of Rule G-17 (*e.g.*, the prohibitions on providing bidders with "last looks" and encouraging off-market bids), although the requirements of draft Rule G-43 would not supplant those of Rule G-17.

Draft Rule G-43(d) provides that a broker's broker must adopt and follow policies and procedures addressing certain enumerated matters, which are designed to result in a fair process consistent with the

special role of the broker's broker as an intermediary between two dealers. Although the draft rule would not preclude broker's brokers from having customers, it would prevent them from providing those customers or other dealers not party to a transaction with information about bid prices not available to the general public on an equal basis or information on the ownership of securities.

SUMMARY OF DRAFT AMENDMENTS TO RULES G-8, G-9, AND G-18

The draft amendments to Rule G-8 and Rule G-9 would make it express that broker's brokers must retain records of all bids received (whether amended or withdrawn) for three years, together with the time of receipt.

Upon adoption of draft Rule G-43, the draft amendments to Rule G-18 would remove the sentence concerning broker's brokers from Rule G-18, because the same language is included in draft Rule G-43 (a)(i).

DISCUSSION OF COMMENTS ON THE ORIGINAL DRAFT INTERPRETIVE GUIDANCE

Definition of Broker's Broker [4]

Comments Received. SIFMA said that the proposed definition of "broker's broker" does not sufficiently define what a broker's broker is, or the limited nature of the activities of a broker's broker. It also said that the clause "or holds itself out as a broker's broker" is unclear and should be omitted from any final definition.

SIFMA proposed what it referred to as a "function-based definition,"[5] which would provide that a " municipal securities broker's broker" is a broker, dealer, or municipal securities dealer that:

- acts as a disclosed agent or riskless principal in the purchase or sale of municipal securities for an undisclosed registered dealer, sophisticated municipal market professional ("SMMP"), or institutional counterparty;
- does not have or maintain any municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;
- executes equally matched transactions contemporaneously;
- does not carry any customer accounts; does not at any time receive or hold customer funds or safekeep customer securities;
- does not participate in syndicates;
- acts in the limited agency capacity of providing liquidity, market information, order matching, and anonymity through facilitation of transactions in the interdealer market;
- does not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed, or determine the timing of execution; and
- is compensated by a commission, not a mark-up.

MSRB Response. The definition proposed by SIFMA would make it easy for a firm to escape classification as a broker's broker and, accordingly, avoid application of the rules for broker's brokers. For example, a firm could simply carry customer accounts and avoid classification as a broker's broker, because part of the definition of a broker's broker proposed by SIFMA is that the firm not carry customer accounts. The MSRB continues to believe that the definition of broker's broker used in the Notice is the appropriate one. The MSRB definition of broker's broker (in draft Rule G-43(e)(iii)) is a functional definition. It focuses on the key function of a broker's broker -- effecting transactions in municipal securities on behalf of other dealers.[6] The alternative clause "or holds itself out as a broker's broker" was included in the definition because the burden should not be on the selling dealer to know whether a

firm holding itself out as a broker's broker, in fact, principally effects trades for other dealers. The key is the nature of the duty that the selling dealer should reasonably expect to have owed to it.

However, the MSRB has decided to address some of the factors identified by SIFMA in draft Rule G-43. Among other things, draft Rule G-43(d)(i)(C) prohibits broker's brokers from maintaining any municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes, and draft Rule G-43(d)(i)(D) prohibits them from participating in syndicates or similar accounts for the purchase of municipal securities. Draft Rule G-43(d)(i)(E) requires that broker's brokers execute equally matched trades contemporaneously. Draft Rule G-43(d)(i)(F) does not require that broker's brokers be compensated by commissions. Instead, it requires that the compensation of the broker's broker to be disclosed to each contra-party in matched transactions.

Broker's Brokers as Agents

Comments Received. SIFMA noted that the Notice provides that, for purposes of all MSRB rules, a transaction by a broker's broker will be considered a principal transaction, rather than an agency transaction, if the securities are held in any account of the broker's broker, even if only in its clearing account. SIFMA argued that the Notice elevates form over substance.[7] Instead, SIFMA argued, in determining the nature of the transactions, the MSRB should focus on the relationship of the broker's broker and its counterparties, which SIFMA said is a limited agency relationship.[8] However, SIFMA argued, even if a transaction is effected by a broker's broker as an agent, the broker's broker should not be required to disclose the identity of the other side of a transaction or express willingness to do so, as anonymity is one of the primary services that broker's brokers provide to their counterparties.

TMC argued that broker's brokers should be permitted to serve as agents for both the potential seller and bidders in all cases.

MSRB Response. Draft Rule G-43 no longer addresses whether broker's broker trades are principal or agency trades. If a broker's broker has customers, its pricing obligations to them will be governed by either Rule G-18, in the case of agency trades, or Rule G-30, in the case of principal trades. The MSRB has also not proposed any changes to the dealer confirmation requirements of Rule G-12.

Draft Rule G-43(a)(iii) permits a broker's broker to act as agent for both potential seller and bidders in: (i) a bid wanted, if it has received consent from the potential seller and bidders or (ii) an offering. Unlike bid-wanteds, in offerings selling dealers notify the broker's broker at the commencement of the offering of the price they desire or are willing to accept. They understand that broker's brokers will negotiate between them and bidders during the course of the offering. Offerings also tend to involve larger blocks of securities and more frequently traded securities than those involved in bid-wanteds. Given the abuses that have occurred in bid-wanteds, the MSRB is unwilling to extend this dual agency concept without the express consent of both parties. However, as noted below, the MSRB requests comment on whether an exception should be permitted for electronic trading systems that qualify as broker's brokers.

Non-Mandatory Guidance

Comments Received. SIFMA supported the steps set forth in the proposed interpretive guidance that may need to be taken to ensure that the bid-wanted process is fair and reasonable, but argued that they should not be mandatory, since "the entire bid gathering process is subject to the control of the seller."[9]

MSRB Response. Draft Rule G-43(b) provides that a bid-wanted conducted in a manner that satisfies the requirements of the rule concerning bid-wanteds will generally satisfy the obligation of a broker's broker to use a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing

market conditions, depending on the specific facts and circumstances of the transaction. The draft rule does not mandate the use of bid-wanteds. However, draft Rule G-43(c) provides that, if the broker's broker uses a bid-wanted to satisfy its pricing obligation under the rule, the bid-wanted must be conducted in the manner specified by the rule. Given the abuses of bid-wanteds highlighted by the SEC and FINRA enforcement actions, the MSRB considers it appropriate to mandate certain minimum steps that broker's brokers using bid-wanteds to satisfy their pricing obligation must take to help ensure that bid-wanteds are conducted in a fair and reasonable manner. Selling dealers will also benefit from having bid-wanteds conducted in a uniform manner, subject to procedures designed to minimize unfair conduct. Draft Rule G-43 would not preclude a broker's broker from using a bid-wanted process that does not meet all of the provisions of section (c) thereof, but such process would be less effective in establishing that the broker's broker has used reasonable efforts to obtain a fair and reasonable price in relation to prevailing market conditions as required under draft Rule G-43(a)(i) and would require greater evidence of other steps taken by the broker's broker to obtain such price.

Rule G-18 Standard Not Appropriate for Broker's Brokers

Comments Received. TMC and Wolfe & Hurst both argued that broker's brokers should not be required to employ the same standard of care and diligence in executing transactions as if the transactions were being done for their own account. They said that this standard should only apply to dealers in transactions with customers.

MSRB Response. The MSRB disagrees with this comment, given the important role that broker's brokers play in the secondary market for municipal securities, and particularly the provision of liquidity for retail investors. However, the MSRB is seeking comment on whether there should be an exception for an auction process conducted on an electronic trading system by a broker's broker, without voice brokerage.

"Process-Based Rule"

Comments Received. SIFMA argued that the proposed guidance would change the rule from a "process-based rule" to an "outcome-based rule" by requiring broker's brokers to determine whether the price resulting from a bid-wanted is reasonable and notifying the selling dealer in writing if the broker's broker cannot make that determination. SIFMA said that Rule G-18 does not require dealers effecting agency trades for customers to take these actions[10] and that the proposed guidance inappropriately places the primary burden on whether a transaction should occur on the broker's broker, rather than on the selling dealer. SIFMA argued that the selling dealer is in a better position to make a determination of whether a price is fair than is a broker's broker.

MSRB Response. The MSRB disagrees with SIFMA that the duty of a broker's broker is solely to conduct a well-run bid-wanted. As provided in existing Rule G-18, a broker's broker has an obligation to its dealer client to make a reasonable effort to obtain a fair and reasonable price in relation to market conditions. However, as the MSRB stated in 2004, a widely disseminated and properly run bid-wanted will offer important and valuable information on the fair market value of a security. Accordingly, draft Rule G-43(b) provides that a bid-wanted conducted in a manner that satisfies the requirements of the rule concerning bid-wanteds will generally satisfy the obligation of a broker's broker to use a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions, depending on the specific facts and circumstances of the transaction.

SIFMA noted that "[e]stablished and reputable [broker's brokers] maintain full trading history on all items; bid-wanted items (full description of all bid-wanted items), bid pads (programs containing the history of all firms that bid the item and the levels they bid, as well as PASS history, *i.e.*, all firms that passed on bidding the item), execution history and ticketing/operational history." "The advantage that [broker's

brokers] have in the market is their continuous communication with the dealer community or "Street." "[Broker's brokers] often acquire knowledge of the various sectors of the municipal bond market, knowledge that individual dealers/banks may not have developed. It takes a considerable amount of effort, expense, and determination for [a broker's broker] to acquire sufficient knowledge of any local market . . . ." The draft rule would merely require that broker's brokers use this knowledge or other established industry sources of information, such as the MSRB's Electronic Municipal Market Access ("EMMA") system, to help confirm that their primary method of obtaining a price for the security is reasonable. The MSRB expects that, if broker's brokers were selling securities for their own account, they would take all of their knowledge about the securities into account in determining whether the bid-wanted had resulted in a fair and reasonable price.

The draft rule concerns the activities of broker's brokers. Draft Rule G-43 does not draw an analogy between the duty of a broker's broker and the duty of a dealer serving as agent to a customer. It also does not address whether Rule G-17 would already require a dealer effecting an agency trade for a customer to provide disclosure if it did not consider the trade price to be fair and reasonable. The MSRB will consider issuing further guidance on that subject in the future.

Duty of Broker's Broker

Comments Received. SIFMA objected to the proposal that if, after a reasonable effort, the broker's broker cannot determine a fair and reasonable price within a reasonable degree of accuracy, the broker's broker may still effect the trade with its dealer client if it discloses that fact to the dealer client and the selling dealer acknowledges such disclosure in writing. SIFMA argued that this provision "places the primary burden of determining whether a transaction should occur on the [broker's broker], rather than on the sellers of the securities."[11]

MSRB Response. The information about the value of municipal securities provided to a selling dealer by a broker's broker is only one factor that the dealer must take into account in determining a fair and reasonable price for its customer. In fact, in 2004, the National Association of Securities Dealers ("NASD") announced that it had fined eight dealers for relying solely on prices obtained in bid-wanteds conducted by broker's brokers, which the NASD found to be significantly below fair market value.[12] In that same year, the MSRB said that "particularly when the market value of an issue is not known, a dealer (or a broker's broker subject to the requirements of Rule G-18) may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations . . . ."

Draft G-43(a)(iv) only requires that the broker's broker notify its client that it has not been able to determine a fair and reasonable price for the securities in relation to prevailing market conditions. The broker's broker is not required to provide notice to other parties, including the selling dealer's customer.[13] The selling dealer is then on notice that it must take additional steps to determine a fair and reasonable price for the securities. For example, a selling dealer may be aware of events unknown to the broker's broker, because they are not required to be reported to the MSRB's EMMA system, which may have a material effect on the price of the security.

Harm to Secondary Market

SIFMA argued that, as a result of the required notice and required selling dealer acknowledgement, "the secondary market for municipal securities could be harmed because dealers may be discouraged from committing capital to the municipal securities secondary market, especially to lower-rated securities, retail-sized blocks and any security in a volatile market."[14]

MSRB Response. SIFMA's main objection seems to be that the provision of such notice, coupled with a requirement of written acknowledgement by the client or in certain cases clients, would slow down trading and discourage the purchase of retail blocks of securities, because dealers might have to do their own research to determine fair market value. The MSRB believes that most retail customers would prefer a better price to a speedy trade. Furthermore, the MSRB considers SIFMA's argument to be exaggerated and perilous. If a well-run bid-wanted is an effective means of determining fair market value, there should be few instances in which a broker's broker would need to provide its client or clients with notice that it could not determine a fair and reasonable price for securities in relation to prevailing market conditions with a reasonable degree of accuracy. This notice assists dealers by putting them on notice as to which potential trades require particular scrutiny. SIFMA's letter contains a list of the various sources of information to which dealers have access to assist them in making pricing determinations, in addition to the information they receive from broker's brokers.

Alternative to Proposed Disclosure re Pricing

Comments Received. Hartfield, Titus suggested that, as an alternative to the requirement that a broker's broker provide written disclosure to its client when it could not determine with a reasonable degree of accuracy that the highest bid represented a fair and reasonable price, a broker's broker should inform the selling dealer if it had reason to believe that a bid was either above or below certain parameters that the broker's broker would establish for this purpose and disclose to dealers. The broker's broker would then follow the dealer's directions on what actions to take.

MSRB Response. The fact that a bid deviates significantly from recent trade prices for the same security may be one indication to the broker's broker that the bid may not represent a fair and reasonable price under prevailing market conditions and cause the broker's broker to communicate that concern to the selling dealer. *See* the discussion of comments received on erroneous bids, below.

Customers

Comments Received. Wolfe & Hurst commented that, "The use of a business model by broker's brokers that authorizes transactions with institutions and SMMPs permits unfair dealing and should be prohibited."

SIFMA made a number of comments about the sections of the Notice concerning customers of broker's brokers. It stated that the proposed guidance regarding transactions with customers does not appropriately reflect the limited and sophisticated nature of the counterparties of broker's brokers, which are either SMMPs or other institutional investors. Furthermore, SIFMA argued, the MSRB should consider revising its definition of SMMP to allow more institutional customers to qualify as SMMPs. For example, SIFMA objected to the requirement that, to be an SMMP, an institutional investor must have at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management. SIFMA said that broker's brokers should be able to choose the means by which they disclose to their dealer clients that they also have customers (*e.g.*, website disclosure or written communications to all counterparties including other important information). While SIFMA agreed that counterparty-specific information should not be shared with other counterparties, it argued that the MSRB proposal would appear to prohibit any market-related communication from a broker's broker to a customer. It said that information about current bids for similar securities is useful information that broker's brokers should be able to share.[15]

MSRB Response. The MSRB is concerned that precluding broker's brokers from having customers might be viewed as anti-competitive. However, the MSRB is also concerned about potential abuses attributable to customer relationships and, as noted below, specifically requests comment on whether a broker's broker should be permitted to have customers. The MSRB has determined not to change the

definition of SMMP at this time. Draft Rule G-43(d)(i)(H) permits a broker's broker to provide any person, including customers, with information about bid prices if the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public. Otherwise, it may only disclose information about bid prices to its selling dealer client and, in the case of the winning bidder, the cover bid. Draft Rule G-43(d)(i)(I), however, prohibits a broker's broker from disclosing non-public information about the ownership of municipal securities to any person, including customers. The draft rule also provides for the disclosure by broker's brokers that they have customers to be in writing, with the specific manner left to the discretion of the broker's broker.

Self-Dealing

Comments Received. SIFMA agreed with the provisions of the proposed guidance that preclude self-dealing by a broker's broker and stated that broker's brokers should never trade securities for their own account.

MSRB Response. Draft Rule G-43(d)(i)(G) incorporates this prohibition.

Erroneous Bids

Comments Received. SIFMA said that broker's brokers should be able to contact bidders for clarification if their bids are "clearly erroneous,"[16] stating that the acceptance of clearly erroneous bids is a violation of Rule G-13 (on quotations relating to municipal securities).[17] SIFMA argued that a requirement that a broker's broker contact all bidders in a bid-wanted, rather than only a particular bidder, could lead to unintended consequences to the detriment of the auction process. Furthermore, SIFMA said that broker's brokers should be able to let bidders know where they stand in the bid process after the deadline for the submission of bids.[18]

MSRB Response. The MSRB is concerned that bid-wanteds have been conducted in a manner in which broker's brokers engage in discussions with selected potential bidders throughout the bid-wanted, and certain bidders have developed the practice of waiting until very late in the process to submit their bids after they have been told that bids have been placed that potential sellers find to be acceptable. There is too much opportunity for abuse if broker's brokers are allowed to contact bidders selectively regarding bid prices prior to the deadline for the submission of bids. In the past, broker's brokers have used such communications to suggest indirectly to bidders that they could lower their bids and still submit winning bids. The MSRB does not believe that it is sufficiently protective of the integrity of the bid-wanted process to rely on the certifications of broker's brokers that their communications with bidders only concern "clear errors." Draft Rule G-43(c)(vi) generally permits such contacts only after the bid deadline and does not permit bids to be changed after the deadline.

The MSRB does not consider the acceptance of a bid and communication of that bid to the selling dealer alone to be the publication or distribution of a quote within the meaning of Rule G-13. Nevertheless, the MSRB is concerned that certain trades may be effected at erroneous prices and that such prices will then be reported on EMMA within 15 minutes, creating a misperception about the true fair market value for such securities. Accordingly, Rule G-43(c)(vi) permits broker's brokers to notify bidders about potential errors in their bids in two ways: (1) First, the broker's broker may contact the particular bidder that it suspects has submitted a bid in error after first receiving written permission from the selling dealer to do so. This writing may take the form of an e-mail or other electronic communication. (2) Second, the broker's broker may notify all bidders for the security that a potentially erroneous bid for the security has been submitted and offer all bidders the opportunity to adjust their bids. In order to utilize this second alternative, the broker's broker must have provided advance disclosure to the client that such

communications may occur and all bidders are given the opportunity to adjust their bids. This disclosure may be provided in the terms and conditions of the broker's broker services previously agreed to by the client.

As noted below, the MSRB requests comment on whether the MSRB should permit electronic trading systems to satisfy the requirements of draft Rule G-43(a)(iv) and (c)(vi) by providing notification to a bidder of a potentially erroneous bid by means of an automatically generated electronic communication to such bidder that its bid deviates from the most recently reported trades for the security by more than a pre -determined amount, coupled with an automatic electronic direction that the bidder must re-submit its bid if it wishes the bid to be accepted.

Rule G-17

Comments Received. SIFMA agreed that it is inconsistent with Rule G-17 to submit fake cover bids, adjust a bid without the bidder's knowledge, fail to inform the selling dealer of the highest bid, accept bids after a sharp bid deadline, or submit fictitious trade prices.[19]

MSRB Response. MSRB Rule G-14(a) already prohibits the submission of fictitious trade prices. Draft Rule G-43 prohibits the rest of this behavior.

Records of Bids

Comments Received. SIFMA agreed that broker's brokers should be required to keep records of all bids, together with the time of receipt, and that broker's brokers should be prohibited from overwriting bids.

MSRB Response. The draft amendments to Rules G-8 and G-9 contain these requirements.

Bid Deadlines

Comments Received. TMC argued there should be no precise deadlines for the submission of bids.

MSRB Response. Draft Rule G-43(c)(v) does not require that there be a precise deadline for the submission of bids. However, it does provide that, if there is a precise or "sharp" bid deadline, the broker's broker may not accept bids after that deadline or allow bids to be changed after that deadline.

* * * * *

The MSRB requests comment on all aspects of the proposal, including in particular: (i) whether a broker's broker should be permitted to have customers; (ii) whether the rules for electronic trading systems that qualify as broker's brokers should differ from those for voice brokers and, if so, in what specific manner. With regard to electronic trading systems, the MSRB specifically requests comment on (a) whether dual agency should be permitted in bid-wanteds without the requirement to obtain prior written consent from both the selling dealer and bidders; and (b) whether the MSRB should permit such systems to satisfy the requirements of draft Rule G-43(a)(iv) and (c)(vi) by providing notification to a bidder of a potentially erroneous bid by means of an automatically generated electronic communication to such bidder that its bid deviates from the most recently reported trades for the security by more than a pre-determined amount, coupled with an automatic electronic direction that the bidder must re-submit its bid if it wishes the bid to be accepted.

February 24, 2011

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Text of Draft Rule G-43

Rule G-43 Broker's Brokers

(a) *Duty of Broker's Broker.*

(i) Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

(ii) A broker's broker that undertakes to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities must not take any action that works against the client's interest to receive advantageous pricing.

(iii) In an offering, a broker's broker may represent both the potential seller and the bidders. In a bid-wanted, the client of the broker's broker is presumed to be the potential seller and a broker's broker may not represent both the potential seller and the bidders unless that is disclosed prominently and both parties agree in writing to such dual representation. In the case of the potential seller, such written agreement must occur at or prior to the time the seller directs the broker's broker to try to find bidders. In the case of bidders, such written agreement must occur prior to the submission of a bid by such bidder.

(iv) If the broker's broker believes that the highest bid received in a bid-wanted or offering does not represent a fair and reasonable price in relation to prevailing market conditions within a reasonable degree of accuracy, the broker's broker must disclose that fact to its client or, if the broker's broker represents both parties in accordance with paragraph (iii) of this section, clients, in which case the broker's broker may still effect the trade, if the client or clients acknowledge such disclosure in writing.

(b) *Use of Bid-Wanteds.* A bid-wanted conducted in a manner that satisfies the requirements of section (c) of this rule will generally satisfy the obligation of a broker's broker under section (a)(i) of this rule, depending on the specific facts and circumstances of the transaction.

(c) *Conduct of Bid-Wanteds.* If a bid-wanted is used to help the broker's broker satisfy its obligation under section (a) of this rule, it must be conducted in the following manner:

(i) A broker's broker must disseminate a bid-wanted widely (including, but not limited to, the underwriter of the issue and prior known bidders on the issue, to the extent reasonably feasible) to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

(ii) If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker must reach dealers with specific knowledge of the issue or known interest in securities of the type being offered.

(iii) A broker's broker may not encourage off-market bids.

(iv) A broker's broker may not give preferential information to bidders in bid-wanteds on where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out").

(v) If the broker's broker or its client has imposed a precise, or "sharp," deadline for the acceptance of bids, the broker's broker must not accept bids or changes to bids after the bid deadline.

(vi) A broker's broker may not contact a bidder in a bid-wanted about its bid price prior to the conclusion of the auction process, unless the broker's broker believes that the bid has been submitted in error and: (A) the broker's broker has received written permission from the client to do so, or (B) there is advance disclosure to the client that this may happen and all bidders are given the opportunity to adjust their bids. Otherwise, discussions with bidders during a bid-wanted must be limited to discussions about the characteristics and quality of the security.

(vii) A broker's broker may not adjust a bid without the bidder's written instruction.

(viii) A broker's broker must not fail to inform the selling dealer of the highest bid.

(ix) A broker's broker must check the results of the bid-wanted process against other objective data (*e.g.*, recent transaction prices for the securities in question or for similar securities).

(d) *Policies and Procedures.*

(i) As part of the written supervisory procedures required to be adopted, maintained and enforced by a broker's broker under Rule G-27(c), a broker's broker must adopt and comply with policies and procedures that:

(A) disclose the nature of its undertaking for the client;

(B) disclose the manner in which the broker's broker will conduct bid-wanteds and offerings;

(C) prohibit the broker's broker from maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;

(D) prohibit the broker's broker from participating in syndicates or similar accounts for the purchase of municipal securities;

(E) require the broker's broker to execute equally matched trades contemporaneously;

(F) require the compensation of the broker's broker to be disclosed to each contra-party in matched transactions;

(G) prohibit self-dealing;

(H) prohibit the broker's broker from providing any person other than a selling dealer client (that may receive all bid prices) and the winning bidder (that may receive only the price of the cover bid) with information about bid prices, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public;

(I) prohibit the broker's broker from disclosing confidential, non-public information about the ownership of municipal securities to any person; and

(J) if a broker's broker has customers, provide for the disclosure of that fact to both sellers and bidders in writing.

(ii) The broker's broker must disclose the policies and procedures adopted pursuant to subsection (d)(i) of this rule to sellers and bidders in writing at least annually and post such policies and procedures in a prominent position on its website.

(e) *Definitions.*

(i) "Bidder" means a potential buyer in a bid-wanted or offering.

(ii) "Bid-wanted" means an auction for the sale of municipal securities in which:

(A) the potential seller does not specify a minimum or desired price for the securities that are the subject of the auction at the commencement of the auction;

(B) the identities of the bidders and the potential seller are not disclosed prior to the conclusion of the auction, other than to the broker's broker;

(C) bidders must submit bids for the auctioned securities to the broker's broker; and

(D) the potential seller decides whether to accept the winning bid.

(iii) "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

(iv) "Cover bid" means the next best bid after the winning bid.

(v) "Dealer" means broker, dealer, or municipal securities dealer.

(vi) For purposes of this rule, "offering" means a process for the sale of municipal securities in which:

(A) the potential seller specifies a minimum or desired price for the securities as part of the offering, at the offering's commencement;

(B) the identities of the potential seller and the bidders are not disclosed prior to the conclusion of the offering; and

(C) a broker's broker negotiates between the potential seller and the bidders to arrive at a price acceptable to the parties.

Text of Draft Amendments to Rules G-8, G-9, and G-18

Rule G-8

Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xxiv) No change.

(xxv) *Broker's Brokers.* A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain records of all bids for municipal securities that it receives, together with the time of receipt.

(b) - (e) No change.

(f) Compliance with Rule 17a-3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); and paragraphs (a)(xi) through (a)**(xxv)**~~**(xxiv)**~~ shall in any event be maintained.

Rule G-9

Preservation of Records

(a) No change.

(b) *Records to be Preserved for Three Years.* Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i) - (xv) No change.

(xvi) the records to be maintained pursuant to rule G-8(a)(xxii); ~~**and**~~

(xvii) the records to be maintained pursuant to Rule G-8(a)(xxiii)~~.~~**; and**

(xviii) the records to be maintained pursuant to Rule G-8(a)(xxv).

Rule G-18

Execution of Transactions

Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. ~~**A broker, dealer or municipal securities dealer acting as a "broker's broker" shall be under the same obligation with respect to the execution of a transaction in municipal securities for or on behalf of a broker, dealer, or municipal securities dealer.**~~

---

[1] *FINRA v. Associated Bond Brokers, Inc.* Letter of Acceptance, Waiver and Consent No. E052004018001 (November 19, 2007) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to lowering the highest bids to prices closer to the cover bids without informing either bidders or sellers); *FINRA v. Butler Muni, LLC* Letter of Acceptance, Waiver and Consent No. 2006007537201 (May 28, 2010) (settlement in connection with alleged violation of Rule G-17 by broker's broker due to failure to inform the seller of higher bids submitted by the highest bidders); *D. M. Keck & Company, Inc. d/b/a Discount Munibrokers, et al.*, Exchange Act Release No. 56543 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for

failure to disseminate fake cover bids to both seller and winning bidder; also settlement in connection with alleged violation of Rules G-14 and G-17 by broker's broker due to payment to seller of more than highest bid on some trades in return for a price lower than the highest bid on other trades, in each case reporting the fictitious trade prices to the MSRB's Real-Time Trade Reporting System); *Regional Brokers, Inc. et al.*, Exchange Act Release No. 56542 (September 27, 2007) (settlement in connection with alleged violation of Rules G-13 and G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder; broker's broker allegedly violated Rule G-17 by accepting bids after bid deadline); *SEC v. Wolfe & Hurst Bond Brokers, Inc. et al.*, Exchange Act Release No. 59913 (May 13, 2009) (settlement in connection with alleged violation of Rule G-17 by broker's broker for dissemination of fake cover bids to both seller and winning bidder and for lowering of the highest bids to prices closer to the cover bids without informing either bidders or sellers). These cases also involved violations of Rules G-8, G-9, and G -28.

[2] MSRB Notice 2010-35 (September 9, 2010).

[3] Associated Bond Brokers, Inc. ("ABBI"); Hartfield, Titus & Donnelly, LLC ("Hartfield"); Regional Brokers, Inc. ("RBI"); RW Smith & Associates ("RW Smith"); Securities Industry and Financial Markets Association ("SIFMA"); TheMuniCenter, L.L.C. ("TMC"); and Wolfe & Hurst Bond Brokers, Inc. ("Wolfe & Hurst").

[4] The Notice provides: "For purposes of this notice, "broker's broker" means a broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, and municipal securities dealers ("dealers") or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company."

[5] *See also* Letter of Wolfe & Hurst.

[6] Currently, "broker's broker" is not specifically defined by MSRB rules. Pursuant to Rule D-1, therefore, the definition of "broker's broker" promulgated by the SEC under the Securities Exchange Act of 1934 controls. This definition, developed for purposes of the SEC's net capital rules, provides: "The term municipal securities "brokers' broker" shall mean a municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" . . . and who does not have or maintain any municipal securities in its proprietary or other accounts."

[7] *See also* Letter of Hartfield.

[8] *See also* Letters of Hartfield and Wolfe & Hurst.

[9] *See also* Letters of Hartfield and TMC.

[10] *See also* Letter of Hartfield.

[11] *See also* Letter of Wolfe & Hurst.

[12] *See* http://www.finra.org/Newsroom/NewsReleases/2004/P011465.

[13] Contrary to the statements in the Letter of Wolfe & Hurst, the MSRB has not proposed that broker's brokers have any duty to the customers of their selling dealer clients.

[14] *See also* Letters of Hartfield and TMC.

[15] *See also* Letter of Hartfield.

[16] *See also* Letter of Wolfe & Hurst.

[17] *See also* Letter of TMC.

[18] *See also* Letters of Hartfield and RBI.

[19] *See also* Letter of Wolfe & Hurst.

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Alphabetical List of Comments on MSRB Notice 2011-18 (February 24, 2011)

1. American Municipal Securities, Inc.: Letter from John C. Petagna, Jr., President, dated April 26, 2011
2. Barker, Bill: E-mail dated April 18, 2011
3. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated April 21, 2011
4. Chapdelaine & Co.: Letter from August J. Hoerrner, President, dated May 5, 2011
5. Conners & Company, Inc.: E-mail from Jay White dated April 13, 2011
6. Foard, Dale: E-mail dated April 21, 2011
7. Hartfield, Titus & Donnelly, LLC: Letter from Mark J. Epstein, President and Chief Executive Officer, dated April 21, 2011
8. KeyBanc Capital Markets Inc.: E-mail from Michael A. Burrello, Managing Director, Municipal Trading and Underwriting, dated April 21, 2011
9. Kiley Partners, Inc.: E-mail from Michael Kiley dated April 12, 2011
10. Knight BondPoint: Letter from Marshall Nicholson, Managing Director, dated April 21, 2011
11. M.E. Allison & Co., Inc.: E-mail from Christopher R. Allison, Chief Financial Officer, dated April 20, 2011
12. National Alliance Securities: E-mail from Bob Barnette, Municipal Trader, dated April 21, 2011
13. Oppenheimer & Co., Inc.: Letter from Marty Campbell, Senior Director, Municipal Underwriting & Trading
14. Potratz, Jay: E-mail dated April 21, 2011
15. R. Seelaus & Co., Inc.: E-mail from Richard Seelaus dated April 13, 2011
16. Regional Brokers, Inc.: Letter from Joseph A. Hemphill, III, CEO, and H. Deane Armstrong, CCO, dated April 21, 2011
17. Regional Brokers, Inc.: Letter from Joseph A. Hemphill, III, President and CEO, and H. Deane Armstrong, CCO, dated May 12, 2011
18. RH Investment Corporation: Letter from Andrew L. "Bud" Byrnes, III, Chief Executive Officer, dated April 21, 2011
19. Robbins, Leonard Jack: Letter dated May 1, 2011
20. RW Smith & Associates, Inc.: Letter from Paige W. Pierce, President and CEO, dated April 27, 2011
21. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 29, 2011
22. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 29, 2011
23. Seidel & Shaw, LLC: Letter from Thomas W. Shaw, President
24. Sentinel Brokers Company, Inc.: E-mail from Joseph M. Lawless, President, dated April 12, 2011
25. Sentinel Brokers Company, Inc.: E-mail from Joseph M. Lawless, President, dated April 13, 2011

26. Seven Points Capital: E-mail from Jerry Racasi dated April 13, 2011
27. Stifel, Nicolaus & Company, Incorporated: E-mail from Andy Jackson dated April 20, 2011
28. Stoever Glass & Co.: Letter from Frederick J. Stoever, President, dated April 15, 2011
29. TheMuniCenter, LLC: Letter from Thomas S. Vales, Chief Executive Officer, dated April 21, 2011
30. Tradeweb Markets LLC: Letter from John Cahalane, Managing Director, Head of Tradeweb Retail, dated May 3, 2011
31. Walsh, John: E-mail dated April 21, 2011
32. Wiley Bros.-Aintree Capital, LLC: E-mail from Keener Billups, Managing Director, dated April 26, 2011, corrects Wiley Bros.-Aintree Capital, LLC: E-mail from Keener Billups, Managing Director, dated April 13, 2011
33. William Blair: E-mail from Tom Greene dated April 21, 2011
34. Welbourn, Steve: E-mail dated April 21, 2011
35. Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, President, dated April 25, 2011, corrects Wolfe & Hurst Bond Brokers, Inc.: Letter from O. Gene Hurst, President, dated April 21, 2011
36. Ziegler Capital Markets: E-mail from Kathleen R. Murphy dated April 13, 2011

INVESTMENT BANKERS
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April 26, 2011

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Ronald W. Smith,
Corporate Secretary
MSRB
1900 Duke Street
Alexandria, VA 22314

Re: Comments on Notice 2011-18 – Broker's Brokers

Dear Sir:

The following comments are submitted relative to the proposed rule regarding brokers' brokers (MSBB). While our firm is not an MSBB, we are active in the secondary market for municipal bonds, and are interested in the proposed rule and how it may affect the liquidity in market.

The MSBB's do provide a useful service in enhancing market liquidity. In addition to the electronic services available for submitting bids, the MSBB's provide additional services in soliciting and obtaining bids.

It is a concern that the proposed rule will have unintended consequences and will interfere with the liquidity of the market. It seems inappropriate to place the MSBB's in the position of monitoring fair pricing. Our firm does not rely on information from them in determining fair pricing of municipal bonds, and would not rely only on such information from an MSBB if the rule is adopted as drafted. We are expected to price appropriately and we make every effort to do so and we use information sources such as EMMA to assist in this.

The new procedure may discourage bidders because of the cumbersome procedures required and therefore reduce liquidity in the market. This in turn may hurt our selling customers who receive fewer bids and less opportunity for better prices. The solution to better pricing is to have more bidders.

We support the comments submitted by the Securities Industry and Financial Markets Association on this matter.

Yours truly,

John C. Petagna, Jr.
President

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ST. PETERSBURG, FL ♦ LITTLE ROCK, AR ♦ ORLANDO, FL ♦ PITTSBURGH, PA ♦ WILMINGTON, NC
Member: FINRA, SIPC

From: Bill Barker
Sent: Monday, April 18, 2011 12:37 PM
To: Comment Letters
Subject: Notice 2011-18

These are my opinions solely and not the opinion of my employer. I am providing them because of the value the broker's brokers bring to us in the trading community.

As a trader and market participant for 28 years I have a few comments on the proposed G43 items.

I understand the need to properly regulate a securities market for the benefit of the participants, most particularly the retail investor.

Change has come and, after initial resistance from the dealer community, it has been accepted as part of doing business.

We are a fragmented business causing liquidity issues, sometimes extreme.

The broker's brokers enhance liquidity, and thus are vital to the market.

That being said, the idea that a BB is supposed to know the market value of security is misguided. They may have an opinion, but commit no capital and do nothing more than match buyers to sellers.

Mr. Northam has always expressed the 'contemporaneous value' should be given to a bond when bidding. Again, misguided to cover such a broad, fragmented market with an ideal which is better suited to commoditized markets (but still wouldn't apply to free market capital goods or services).

Credit enhancers have been in shambles, cities and states are in the worst shape since the depression, muni bankruptcy filings are rumored and also real, current financial disclosures are pathetic in most issuers. So given this financial landscape everyone is supposed to know what a bond is worth??? Hmmmm.

The BB should not be held accountable for fair value bond pricing.

I agree that the written permission could be granted, but only as a one-time, blanket agreement between firms such as the blanket underwriting agreements between syndicate members and the manager. This has worked well.

I strongly disagree with the proposal to deal with mistakes on a bid. We are all busy professionals, and as such mistakes are made. Especially with electronic trading platforms we could 'fat finger' a bid, or the system could hiccup. Your proposal submits that we should not be told of a bad bid unless the seller agrees? Not good.

We should not have to take a loss for a mistake when trying to commit capital and liquidity to the muni market.

When writing your regulations, please consider that a MORE liquid market is BETTER for the investors.

William J. Barker
Ross Sinclaire & Assoc. LLC
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Louisville KY 40202
Toll Free 800.292.4563
Direct 502.491.3939
bbarker@rsanet.com

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April 21, 2011

VIA ELECTRONIC MAIL

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

Re: MSRB Notice 2011-18: Request for Comment on Draft Rule G-43 (on Broker's Brokers) and Associated Amendments to Rules G-8 (on Books and Records), G-9 (on Preservation of Records), and G-18 (on Execution of Transactions)

Dear Mr. Smith:

The Bond Dealers of America (the "BDA") is pleased to offer comments on Municipal Securities Rulemaking Board ("MSRB") Notice 2011-18: Request for Comment on Draft Rule G-43 (on Broker's Brokers) and Associated Amendments to Rules G-8 (on Books and Records), G-9 (on Preservation of Records), and G-18 (on Execution of Transactions) (the "Proposal"). The BDA is the Washington, DC based trade association representing securities dealers and banks focused primarily on the U.S. fixed income markets.

The BDA supports the MSRB's efforts to provide guidance to brokers' brokers and supports regulation of the municipal markets that help to achieve market efficiency, encourage liquidity and protect investors. Broker's brokers play an important role providing liquidity in the market. As the MSRB recognizes, a well-run bid-wanted process also has an important role in price discovery. The BDA supports the general thrust of the Proposal and most of its particulars. However, while we understand the concerns of the MSRB that have led to the Proposal, we believe certain aspects of the Proposal do not properly reflect the roles of the different parties and would create inefficiencies in the municipal market that will have an unfavorable impact on investors without providing any real benefit to investors or clients of broker's brokers. Moreover, we caution the MSRB not to impose requirements on this portion of the municipal market that may result in broker's brokers declining to conduct bid-wanteds for smaller lots or lower-rated securities. This is a very important aspect of the municipal market and dealers bid on hundreds and thousands of auctions each day. Broker's brokers have many opportunities and the MSRB's rules should not inadvertently impose requirements that discourage them from conducting bid-wanteds on some of the less liquid securities.

Duty of Broker's Broker to Provide Fair and Reasonable Price Determinations

Broker's brokers provide market liquidity and allow for quick and efficient execution of municipal security transactions by operating an auction process that is fair and providing the broker-dealer with the best bid obtained from that auction process. Under the Proposal, the broker's broker would be required to make a determination as to whether the highest bid received from this process is a fair and reasonable price. If it believes the highest bid is not fair and reasonable, it must disclose that opinion to its client and may not proceed unless the client acknowledges the disclosure in writing.

The BDA notes that the description of the Proposal conflicts with the text of the Proposal. The description says "Draft G-43(a)(iv) *only* requires that the broker's broker notify its client *that it has not been able to determine a fair and reasonable price* for the securities in relation to prevailing market conditions." (emphasis added). Draft G-43(a)(iv), on the other hand, does not mention the inability to determine a fair and reasonable price, but would establish a rule that applies when the broker's broker believes that the highest bid is not fair and reasonable, which requires the broker's broker to reach an opinion about what a fair and reasonable price is. There is, therefore, a clear conflict between the description of the Proposal and the Proposal itself. However, regardless of which rule the MSRB intended to propose, the BDA opposes both because both confuse the roles of the broker's broker and its client, as evidenced by the 2004 NASD fines referred to in Notice 2011-18, and are contrary to the overall thrust of the Proposal, which is to establish rules for a well-run bid-wanted auction that will itself discover the fair and reasonable market price. Both rules also would unreasonably delay the execution of the sale by requiring a determination by the broker's broker that a fair and reasonable price cannot be determined (or alternatively, must be determined and compared to the highest bid) and a written acknowledgement obtained from the client. These formalities will also provide an opportunity for regulators to second-guess the judgment of market participants after-the-fact and with the benefit of hindsight, to which the BDA strongly objects.

The role of broker's brokers is to conduct a bid-wanted or an offering. The role of the client broker is to determine the fair and reasonable price. As the MSRB notes in its description of the proposal, in 2004 the NASD fined eight dealers for relying on prices obtained in bid-wanteds conducted by broker's brokers. It clearly is the responsibility of client brokers to determine a fair and reasonable price. They cannot rely on broker's brokers for that determination under current law, as the 2004 fines demonstrate, and under the Proposal, they could not rely on a broker's broker's opinion that the bids *are not* fair and reasonable but must conduct their own analysis. The Proposal does not relieve client brokers of any burden or provide them – or investors - with any protection they do not have under current law.

Under MSRB Rule G-18, the clients of a broker's broker are registered broker-dealers who have a responsibility when executing a transaction in municipal securities to make a reasonable effort to obtain a price that is fair and reasonable in relation to prevailing market conditions. To have to make the determination not once but twice is inefficient and slows down this process with no increase in benefit to the investor or the

client broker. The responsibility to determine if the price is fair and reasonable does not fall on the broker's broker but solely on the registered broker-dealer client, even if this Proposal were to be adopted. The broker's broker's responsibility is to convey the price it receives from conducting the auction process. The client dealer's responsibility is to determine whether that price is fair and reasonable.

What the proposal does is impose an additional burden on broker's brokers without providing any meaningful benefit. The MSRB justifies the proposed new rule, in part, by saying that "*If* a well-run bid-wanted is an effective means of determining fair market value, there should be few instances in which a broker's broker would need to provide its client or clients with a notice that it could not determine a fair and reasonable price for securities in relation to prevailing market conditions with a reasonable degree of accuracy." (emphasis added). That misses the point. In *every* case, a broker's broker would need to make a determination of a "fair and reasonable" price outside of the bid-wanted process. Otherwise, it could not determine that it could not determine fair and reasonable price (or alternatively, if one follows the text of the Proposal, that the highest bid is not the fair and reasonable price). That determination about a fair and reasonable price would have to be made in every case before the broker's broker could determine whether it needs to send a notice to its client, which the MSRB concedes will be infrequent.

Moreover, the assumption behind the Proposal, which BDA agrees with, is not *"if"* a well-run bid-wanted will discover a fair and reasonable price, but rather *that* a well-run bid-wanted will do so. Other aspects of the Proposal help ensure a well-run bid-wanted and the BDA supports them. Especially because of that, the BDA believes that Draft G-43(a)(iv) is not only superfluous but impedes the bid-wanted process without providing any benefit to clients of broker's brokers or to investors.

Erroneous Bids

Under the proposed Draft G-43(c)(vi), if a broker's broker believes that a bid has been submitted in error, the broker's broker may only contact the bidder if (i) it has written permission from the seller to do or (ii) it gives all bidders the opportunity to adjust their bids after having given the seller advance disclosure of its procedures which include contacting a bidder under such circumstances. In instances where obviously erroneous bids have been submitted, the BDA believes the broker's broker should be allowed to intervene to avoid the possibility of the acceptance of an erroneous bid. BDA understands the MSRB's concern that there may be an opportunity for abuse if broker's brokers are allowed to contact bidders "selectively regarding bid prices prior to the deadline for the submission of bids" but believes the bidder should be notified and able to resubmit if the original bid is clearly erroneous. If the MSRB decides to require written permission from the client before a bidder could be contacted about a clearly erroneous bid, the BDA urges the MSRB to clarify that disclosure to a client by a broker's broker prior to the beginning of the bid-wanted process that it may contact a bidder in the case of a clearly erroneous bid and a decision by the client to continue with the bid-wanted is such permission and that an email exchange satisfies the requirement that the permission be written. Also, the Proposal requires that if one client is contacted because the broker's

broker has determined that an error was clearly made in a bid, that "all bidders are given the opportunity to adjust their bids". In the case of a clearly erroneous bid, this seems to be unnecessary and would create inefficiency when all the broker's broker is doing is attempting to verify the initial bid and to obtain or establish a fair and reasonable price.

Distribution of Auction Results

The BDA strongly supports the efforts of the MSRB to encourage the wide distribution and availability of auction results. These results provide important pricing information about the depth of the market. All market participants benefit from the availability of this information.

Thank you for this opportunity to present our views. Please do not hesitate to call if you have any questions.

Sincerely,

Mike Nicholas
Chief Executive Officer

CHAPDELAINE & CO.
One Seaport Plaza
New York, NY 10038

August J. Hoerrner
President

212-208-9140
Fax 212-480-0434
ajh@chappy.com

May 5, 2011

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: **MSRB Notice 2011-18, Request for Comment on Draft Rule G-43 on Broker's Brokers and Associated Amendments**

Dear Mr. Smith:

Please accept this letter as the response of Chapdelaine & Co to the Municipal Securities Rulemaking Board's Request for Comment on MSRB Guidance on Broker's Brokers, dated February 24, 2011. Chapdelaine & Co. had significant input in the letter submitted by the Securities Industry and Financial Markets Association (SIFMA) and strongly supports the points made in the SIFMA comment letter.

Chapdelaine & Co believes the municipal market would be negatively impacted by the unintended consequences of rule G-43 on Broker's Brokers and associated amendments. We feel strongly these new regulations would be disruptive to the secondary market and significantly limit liquidity specifically for the retail sector of the municipal bond market. References in the proposed rule requiring Broker's Brokers to opine on a fair and reasonable price in a bid wanted auction, prohibiting a Broker's Broker from contacting a high bidder in an obvious error bid situation without written permission of the seller and not being able to comment to a bidder after the bid wanted sharp time are particularly troublesome.

Historically, dealer firms make the decision to either sell or not sell a bid wanted item after a Broker's Broker has reported the high bid and cover bid. It is the dealer firm who has the resources to determine if the high bid is fair and reasonable. Putting this responsibility on a Broker's Broker is unprecedented and is an unrealistic burden and has never been an expectation of the broker dealer community. The purpose of a Broker's Broker is to solicit as many bids as possible on any given bid wanted item. The responsibility of knowing the peculiarities of the underlying credit including its' current financial strengths or weaknesses lies with the dealer firm. A Broker's Broker firm does not have credit research. This has always been the trading standard in the broker dealer and Broker's Broker relationship.

Timely and accurate trade reporting are essential elements of transparency in the municipal market. Forcing a Broker's Broker to execute an error trade with a resulting inflated trade price contradicts the entire transparency effort. Under the proposed rule G-43(c) (vi) the transparency process would be impeded and jeopardized with the requirement of written permission from the seller in an obvious error bid situation. Assuming the selling dealer does not grant permission to the Broker's

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

May 5, 2011
Page 2

Broker to contact the high bidder in an obvious error bit scenario, the resulting off the market trade will lead to an improper trade report and likely an arbitration dispute involving all three parties. This could all be avoided if the Broker's Broker was given a certain degree of discretion to contact the dealer making the clearly erroneous bid without the prior written approval of the selling dealer.

It has been an industry practice that a bidding dealer is entitled to a comment if his bid is being used after the sharp bid wanted time. This has always been an essential component of position and cash management especially in fast moving and volatile markets. Under proposed rule G-43 (c) (iv) a Broker's Broker would be prohibited from informing a bidder if he is the high bid. It is our opinion that dealers would now be reluctant or would make fewer bids if they were not able to effectively manage their risk capital during the course of the trading day. This would also lead to fewer bidders and impact the already fragile liquidity in the market place. After a sharp bid wanted time, it is virtually impossible for a bid wanted to be manipulated and not allowing a Broker's Broker to comment to a bidder on where he stands will negatively affect the day-to-day trading activity in the municipal market. A bidding dealer should be entitled to know his potential obligations in order to properly manage his daily trading position.

We appreciate the opportunity to comment on Notice 2011-18 and would welcome further discussion on the issues addressed.

Respectfully,

August J. Hoerrner
President

From: Jay White

Sent: Wednesday, April 13, 2011 3:31 PM

To: Comment Letters

Cc: shelleyc@rwsbroker.com

Subject: Notice 2011-18 Comment

MSRB,

As a municipal bond market participant for over 40 years, I must state that your most recent suggestions for change in the form of "Notice 2011 – 18" are, in essence, ridiculous. Most brokers now already observe the rule that once given a comment, a bidder may not change his bid. Further, why compound an incorrect or bid given in error by piling on more complications?

Jay White
Conners & Company, Inc.
Cincinnati, Ohio 45202
513-421-0606

From: DALE FOARD, JANNEY MONTGOMERY SC
Sent: Thursday, April 21, 2011 10:55 AM
To: Comment Letters
Subject: g-43

As a 20 year veteran of this industry,I believe this rule is not realistic. Brokers are used to determine fair value based on the bidding process. If there is one bid, is it a fair bid? It is what the market bares. As far as getting a comment on bids: If you are concerned about best x, why would you stymie someone inproving a bid...Riles are unrealistic in the day to day business

Hartfield Titus & Donnelly, LLC.
HTD
Municipal Securities Brokers
www.HTDonline.com
Newport Financial Center
111 Town Square Place, Suite 1430; Jersey City, NJ 07310
(201) 217-8115

April 21, 2011

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

Re: MSRB Notice 2011-18:

Dear Mr. Smith:

Hartfield, Titus & Donnelly, LLC ("Hartfield") appreciates this opportunity to submit comments on the Municipal Securities Rulemaking Board's ("Board") Notice 2011-18[1] (the "Notice") in which the Board requests comment on draft Rule G-43, and associated amendments to Rules G-8, G-9, and G-18 (the "Proposed Rule") regarding municipal securities broker's brokers ("MSBBs"). Hartfield also is participating in the drafting of the comment letter on the Proposed Rule to be submitted by the Securities Industry and Financial Markets Association ("SIFMA") (the "SIFMA Letter"), and will support the views expressed therein. However, we believe that certain aspects of the Proposed Rule pose substantial risks to the efficient operation of the municipal securities secondary market (the "Market"), and are thus submitting these additional comments.

We are taking the opportunity in this letter to reiterate our concerns regarding the aspects of the Proposed Rules that we believe are the most: (i) harmful to maintaining liquidity in the Market; (ii) inconsistent with the efficient operation of bid-wanteds in the Market; and (iii) anti-competitive. We also wish to reiterate the concerns that we raised in our comment letter and the SIFMA comment letter (the "Prior Letters") regarding MSRB Notice 2010-35[2] (the "Proposed Guidance"), as the bulk of the Proposed Guidance is reflected in the Proposed Rule without significant modification. We believe that both the Proposed Guidance and the Proposed Rule will inflict costs on the Market that will greatly outweigh whatever regulatory benefit is perceived by the Board.

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[1] MSRB Notice 2011-18 (Feb. 24, 2011).

[2] MSRB Notice 2010-35 (Sept. 9, 2010).

Rule G-43(a)(iv)

Section (a)(iv) of the Proposed Rule is perhaps the most problematic provision. It requires that MSBBs review the results of each bid-wanted to determine whether the resulting highest bid represents a "fair and reasonable" price "within a reasonable degree of accuracy." By its terms this new requirement would effect every bid-wanted conducted in the Market every day, and require that MSBBs analyze the results of every one. On any given day an MSBB can have over 3,000 items, with 3,000 to 15,000 bids, that must be analyzed. (This is virtually impossible without significant increase in staff, systems and market data analysis.) On the other hand, a dealer (who has the direct responsibility to a customer for such analysis) might put 20 or 30 items out for the bid and have only those items to analyze. Thus, an MSBB as an individual firm, who has no direct responsibility for determining fair market value for retail customers, has a significant burden when compared with an individual dealer. Since the dealer still has the responsibility to make their own determination of fair market value, this "double" requirement is repetitive and unnecessary.

MSBBs are like exchanges, we match sides on trades. To our knowledge no exchange is required to assess the market value of the securities they match. As a matter of fact, we are registered with the SEC as an ATS, because they consider our function to be similar to that of an exchange. Also, to our knowledge, no Inter Dealer Broker (IDB) brokering corporate bonds, Treasury bonds, Federal Agency bonds or Mortgage bonds (even with the problems in the mortgage market) is required to assess the value of the securities they broker. Even in such esoteric markets as emerging markets, CDS, medium-term swaps and others, to our knowledge, the IDB is not required to asses the fair market value of the securities.

This Section also requires that in instances where an MSBB is unable to conclude that the price is fair and reasonable, it is required to notify the selling dealer of this fact and require the dealer to provide written notice that it acknowledges the disclosure and still wants to effect the transaction. We believe that this notice and acknowledgement procedure is the practical equivalent of simply prohibiting such transactions. The time it will take for the analysis, notification, communication and discussion with seller and seller's providing written acceptance and authorization will be an impediment to liquidity in the Market.

We again reiterate our proposal in response to the Proposed Guidance on this point that as an alternative to the higher fair price standard and the proposed written notice procedure, MSBBs could be required to inform the dealer if we have reason to believe that a bid is either above or below certain parameters which we would establish for this purpose, and disclose in our procedures under proposed Rule G-43(d)(ii), and follow the seller's directions on the actions to take. We would keep as part of our documentation of the transaction a notation of the analysis and communication. Thus we would have the RECORD necessary for documentation, even though it may not be written.

Further, we ask the Board to apply the requirements of this section equally to all MSBBs, including to those who operate electronic trading systems. Otherwise this could be seen as anti-competitive.

Rule G-43(c)(ii)

Section (c)(ii) requires that, in cases of bid-wanteds for issues of "limited interest . . . the [MSBB] **MUST** reach dealers with specific knowledge of the issue or known interest in the securities of the type

being offered." Here we would like to reiterate the general point that bid-wanteds should be allowed to continue to be conducted subject to the direction and control of the selling dealer. Our relationship with selling dealer is like being a temporary employee. It is as if we were sitting on their trading desk for the specific transaction and, as such, we follow their instructions. Sometimes the instructions are very thorough and other times very general. In particular, a seller may restrict the manner in which we perform the bid-wanted, such as directing us to seek bids from only certain dealers. It is their bid-wanted and we follow their instructions. Thus, we note that this provision is particularly problematic by requiring that the MSBB **MUST** reach certain dealers. This requires that (a) the MSBB know bidders who meet the criteria, (b) have permission to contact the bidders, and (c) that such bidders are interested in discussing the issue. We believe that the standard in this provision should be changed to "should make reasonable effort to reach" from "must reach."

Further, we ask the Board to apply this requirement to all MSBBs, including those who operate electronic trading systems. Absent any regulatory limitations, in order for such systems to improve the probability of receiving bids that reflect fair and reasonable prices, the requirements of this Section should be met.

Rule G-43(c)(iv)

We agree on the proposed Rule's restriction on giving preferential information (such as "last looks", directions on what to bid, suggestions on lowering a bid or raising a bid) to bidders. However, the role of the MSBB is to facilitate liquidity and the efficient functioning of the Market. To do this, the dissemination of market, and certain bid, information, in a manner consistent with maintaining anonymity, is an appropriate communication with dealers. It is generally required of us by dealers. In addition to general market information and prior execution prices for the same or similar securities, communications should be allowed regarding clearly erroneous bids, whether high or low, and, after the bidding is closed, a bidder's position in the bidding process. (Please refer to our comments on G-43(d)(i)(H) below.) Informing bidders on their position in the bidding process ("where they stand") will allow bidders, who do not have the high bid, to deploy their capital elsewhere and/or place bids on other items.

Rule G-43(c)(vi)

We agree that if an MSBB believes a bid has been submitted in error, before notifying the bidder, they should either get permission from the seller, or provide prior notice to the seller of their procedure on erroneous bids. The latter option is in line with Section (d) of proposed Rule G-43.

However, contacting all bidders to allow them to adjust their bids, will lower prices for the seller and introduce greater inefficiency and delay into the Market. Since the only bid in question is the erroneous bid, which will be much higher than the other bids, the bidder will remove their bid and put it on the correct item. Then the "cover bid" will be the high bid. Allowing all bidders to re-bid will provide them an opportunity to lower their bids and place delays in the bid-wanted system. Our experience with bids on the same item over several days shows that providing a bidder an opportunity to re-bid will result in lower bids in general and a lower price received by the seller. This is unfair to the seller, our client, since the cover bid is probably a fair and reasonable bid.

We are registered as an Alternative Trading System (ATS) with the SEC. This registration requires that we monitor and report trading volume to the SEC. Our records show that any single municipal security (as identified by a single CUSIP number), in one year, trades through us 1.31 times.

Approximately 25% of the single securities we trade, trade more than once. These are generally new issue municipal securities. 75% trade only once. Thus, there may be very little simultaneous or current pricing information on this 75%. Therefore, a bid reduced by $1.50 or $3.00 still could be considered fair and reasonable, yet will translate into a lower price to the seller and ultimately the investor. It is not worth this reduced value just to allow all bidders to re-bid when the high bidder made a mistake and the other bidders are in line.

Rule G-43(c)(vii)

Section (c)(vii) requires that an erroneous bid may not be adjusted without the bidders "written instruction." We believe that this requirement is unnecessary given Section (c)(vi). An erroneous bid is clearly a wrong bid. If a bidder removes or changes their bid it will be recorded due to MSRB Rule G-8(a)(xxv). By requiring the bidder to provide written instructions the Board is introducing an onerous restriction on bidders. This means the bidder has the choice of leaving in their erroneous bid or taking time to notify the MSBB in writing to change the bid. This only delays the process and burdens the bidder with no improvement in liquidity, efficiency or price transparency. There clearly is no benefit to the seller, MSBB or bidder.

We currently record every bid received. If a single bidder changes its bid, we record both the first and the second bid. Since such recordkeeping will be required of all MSBBs in their bid-wanted process, we suggest that with the addition of information on the name of the party at a bidder that authorizes a change in a bid and their reason for the change it would provide sufficient documentation to allow Market regulators to review the propriety of any changed bid on a bid-wanted.

Rule G-43(d)(i)(F)

Section (d)(i)(F) requires that MSBBs disclose their compensation on matched transactions to each counter-party in those transactions. We note that the compensation on MSBBs transactions is very small, relative both to the size of the transactions, and to the compensation earned by dealers on these transactions. Our analysis, using MSRB's reported trade prices, has shown that, on average, dealers involved in our trades make 5 times our commission. This analysis includes a dealer's purchase from a customer, sale to us, our sale to another dealer and that dealer's sale to a customer. Further, we are unaware of any concern in the dealer community regarding the compensation paid to MSBBs. Given this, we do not perceive any industry demand for, or regulatory benefit, from this information on a transaction by transaction basis.

We suggest that MSBBs be required to provide to their trading counter-parties a copy of their commission schedules for transactions, and that such schedules be required to reflect the maximum charge that MSBB could impose on a given transaction. We believe that publishing such a schedule provides Market participants information sufficient to allow them to address any concerns they may have with MSBB compensation.

In addition, since NSCC has no facility for such disclosure and 100% of MSBB transactions are reported and matched at NSCC, this disclosure would require industry wide modifications to trade reporting, matching and clearance. These modifications by dealers, MSBBs and NSCC will be very costly and provide no demonstrated benefit to the industry. Also, this would require modifications to the Board's RTRS infrastructure and reporting of transactions.

If an industry participant wanted to verify the commission an MSBB received on a trade (two or more matched transactions) they could easily review the Board's record of the prices on the transactions. This is generally available within 15 minutes of trade from the Board on their EMMA System or SIFMA on their Investing in Bonds website.

Rule G-43(d)(i)(H)

Section (d)(i)(H) prohibits disclosure of bid information received in a bid-wanted (except to the winning bidder, who may receive the cover bid, and the seller, who may receive all bids) unless the MSBB makes this information available "to all market participants on an equal basis at no cost" and also discloses that such bids may not reflect the fair value of the securities in question. On the day an item is out for the bid, we provide the seller with all bids and the winning bidder, their cover bid. In addition, after the bidding is "closed" (i.e. when we "put up" the high bid to the seller), we provide the other bidders information on where they stand in the bidding. For example in a bid-wanted where the high bid is 99.500, the second bid is 99.400, the third bid is 99.300 and the forth bid is 99.200. If the third bidder (99.300) asks where they stand, we will tell then that they were third and "out by" 20 basis points. This is very valuable information to the bidders. It provides information on current pricing which they use for future analysis of levels on other securities in the market, offerings or bid-wanteds. We do not provide non-bidders with bid information. On the day after the item was "out-for-the-bid", we provide all participants on our system (HTDonline.com), bidders and non-bidders, all bids on all items. We feel this practice provides value to the bidders and encourages dealers to bid on items. In our experience, this has worked well and contributed to secondary market liquidity.

In the release, the Board suggests that the bidding information be made available to the "Public". We interpret this to mean anyone, even retail investors. This is something we have no facility to do. We are registered as an Alternative Trading System with the SEC and have strict requirements on access to our system. Thus we make bidding information only available to those permissioned to access our system. This access is strictly controlled and monitored. In particular, if someone has been permissioned to access the system and does not access it for 30 days, their permission is removed. Further, this disclosure to the public will have an onerous burden on MSBBs who have limited automation in their systems. They would be required to provide paper information on all their bid-wanteds to anyone who contacted them. This will be very costly.

The Board has stated that a disclosure be made that bids may not reflect the fair value of the securities in question. We expect that this requirement can be satisfied by a single disclosure on any page which displays all the bids on our items. If our understanding is in error, please specify the detail requirement in the Rule.

Rule G-43(d)(i)(I)

Section (d)(i)(I), which prohibits the disclosure of certain non-public information, is already directly addressed by MSRB Rule G-24. Since this is simply a restatement of a Rule the MSBB must already comply with, it is duplicative and does not further industry regulation or benefit the Market in any way. We ask that it be removed.

Rule G-43(d)(i)(J)

Section (d)(i)(J) requires that if MSBBs have customers, they must disclose this fact to sellers and bidders in writing. The Board provides no explanation on the rational for this Section. Further there is no history of enforcement from either the SEC or FINRA that would suggest the need for this disclosure. There is an abundance of enforcement actions in other sections of the Market showing abuses attributable to customer relationships, yet there is no similar disclosure requirement for these other segments. If it is the intention of the Board to label certain MSBBs in order to "red brush" them and create an impression of quality different from an MSBB without customers, in this they will succeed. This disclosure only creates an impression of inequality with no attendant Market benefit. It may even be a determent to the MSBB with customers, not because it fundamentally matters in brokering, but only because the Board, by including this Section, leaves the impression that there is something "wrong" with such MSBBs. Also, the Board leaves an impression that such MSBBs have conflicts of interest without actually describing what these conflicts are and how they differ from the conflicts faced by any other municipal securities broker or dealer that has a wide variety of client types. In summary, without further justification being offered, we believe that this provision creates an impression that an MSBB that has customers should be viewed as suspect, and as such, this distinction remains inappropriately anti-competitive among MSBBs. We ask that this Section also be removed.

Rule G-43(d)(ii)

Section (d)(ii) requires that MSBBs must disclose the policies and procedures adopted in order to comply with Section (d)(i) of the Proposed Rule annually in writing to sellers and bidders, and also post them "in a prominent position" on their website. We support the disclosure of an MSBB's policies and procedures as related to the operation of its bid-wanted function. Any other disclosure, such as Written Supervisory Policies and Procedures should not be included in this disclosure. These are proprietary documents, created through significant effort and expense and unique to each MSBB. They relate the firm's method of insuring compliance with various Rules and Regulations of the Board, SEC, FINRA and other regulatory bodies. There is no requirement in any regulatory scheme that would suggest the publication of these documents. We request the Board add specificity to the Rule by limiting the disclosure to those policies and procedures that specifically relate to the operation of the bid-wanted process and not its regulatory compliance.

Request for Comment Regarding Electronic MSBBs

We expect that SIFMA's comment regarding the extent to which the rules for electronic MSBBs should be more permissive than for traditional or voice MSBBs will be that it is anti-competitive on its face. We agree with this position. The Board should provide a detailed explanation of how excluding electronic MSBBs from certain provisions of the Proposed Rule would be a benefit to the Market and the investing public. And in doing so, we would ask the Board to specifically address the issue of electronic MSBBs that are owned directly by dealers or a group of dealers. Providing competitive advantage to one type of market participant through regulation should always be avoided, as it violates the principle of a level playing field as further discussed in our response above to Section (d)(i)(J).

* * * *

As a final comment, we noticed that the Board, in its April report on its Quarterly Meeting, said that they would consider rebalancing its assessments. We would like to remind the Board of our comments on their 2010-10 filing with the SEC on Proposed Fee Increases. We support the Board's desire that the fees it levies on ". . . each dealer reflect the extent of its municipal securities activities." We believe that, in order to allocate its fees in a manner consistent with its stated goal, the Board should transition away from fees on transactions to a fee model based on the *revenue* that any municipal securities dealer derives from its municipal securities activities. Schedule I of each broker-dealer's fiscal year end FOCUS Report requires reporting annual municipal income. We suggest the assessment of transaction fees should be based on this income rather than transactions.

* * * *

We thank you again for the opportunity to comment on this important matter.

Very truly yours,

Mark J. Epstein
President and Chief Executive Officer

From: MBURRELLO
Sent: Thursday, April 21, 2011 11:05 AM
To: Comment Letters
Subject: Notice 2011-18

Comments on G-43

g43(a)(iv)- A broker is not a market maker and generally does not know what a bond is worth. This rule generally will come into play on smaller, lower rated credits. The bidder is better equipped to determine the value of said security. For a third party who's primary job is to broker bonds to determine what a bond is worth is detrimental to our business, both to the seller of the bonds and the issuing entity.

g-43(c)(iv)- During the wanted time, possibly, however during extreme market volatility a trader needs to manage his potential exposure. Not being able to know if you are high bid on a block of bonds will prevent bidding additional bid wants, both from customers and the street. This will hurt liquidity in our market. Knowing if your high bid or not being used should be the standard. Knowing your 12th bid during the bid time is an extreme.

g-43(c)(vii) and g-42(c)(vii)- We are trying to increase the level of liquidity in our market and decrease it.

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From: Michael Kiley
Sent: Tuesday, April 12, 2011 4:36 PM
To: Comment Letters
Subject: Notice 2011-18

G-43(a)(iv) should not become a rule.

Bidding is the purest form of determining market value. This rule expects the Broker's Broker to make a decision on whether or not bids are reasonable and fair. The bid by its very nature is reasonable and fair.

This is similar to marking to "model", meaning, the price should be what a formula calculates it should be. LET THE MARKET WORK!

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April 21, 2011

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: **MSRB Notice 2011-18: Request for Comment on Draft Rule G-43 (On Broker's Brokers) and Associated Amendments to Rules G-8 (On Books and Records), G-9 (On Preservation of Records), and G-18 (On Execution of Transactions)**

Dear Ms. Henry:

Knight BondPoint[1] ("KBP") welcomes the opportunity to comment on Notice 2011-18 (the "Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB requests comments on draft interpretive guidance on municipal securities broker's brokers ("MSBBs"). KBP is a leading provider of electronic fixed income trading solutions that provides firms with access to centralized liquidity and automated, cost-efficient trade execution services. Founded in 1999[2], KBP assists the fixed income marketplace though the automation of trading processes, which ultimately increases firms' operational efficiencies. KBP's goal is to create a fully automated electronic fixed income system to connect across the life of a trade to streamline both pre-and post-trade processes.

KBP operates as an SEC registered alternative trading system ("ATS"), where broker dealers and institutional investors ("Subscribers") electronically post offerings or submit request for quotes ("RFQs") in a variety of fixed income securities. Likewise, Subscribers may also electronically place orders and execute trades against prices posted by other participating Subscriber counterparties on the KBP platform. The KBP platform facilitates the posting of prices by participating Subscribers to increase transparency in the fixed income markets in which it operates.

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[1] Knight BondPoint is a division of Knight Execution & Clearing Services LLC, a subsidiary of Knight Capital Group, Inc ("Knight"). Knight, through its subsidiaries, is a major liquidity center for foreign and domestic equities, fixed income securities, and currencies. Each day, Knight executes millions of trades across a wide range of securities. Knight's clients include more than 4,000 broker-dealers and institutional clients. Currently, Knight employs more than 1,300 people worldwide. For more information, please visit: www.knight.com.
[2] Founded as Valubond, Inc., the firm was acquired by Knight Capital Group, Inc. and re-launched as Knight BondPoint in 2008.

In the context of the MSRB discussions it is critical for KBP to detail the operation and workflow of the KBP ATS and process Subscribers utilize to post fixed income security prices and execute via the platform against another Subscriber's interest that may exist on the platform. The overwhelming majority of transactions on the KBP platform occur between FINRA member firms that have existing trading relationships and hence use the electronic platform to post prices and execute trades. KBP is a strictly electronic platform that does not provide voice brokerage or voice assisted trading[3]. KBP does not act in a principal or agency capacity, but rather as a communications network linking potential buyers and sellers of fixed income securities.

KBP does not provide anonymity to either member firm Subscribers submitting RFQs or Subscribers responding to RFQs with prices. The KBP RFQ process replicates the essential elements of a well conducted RFQ without any means of allowing information leakage to the benefit/detriment of RFQ participants. Furthermore, the KBP platform is designed for firms conducting RFQs to receive responses directly from Subscribers via the platform. Both Subscribers submitting RFQs and Subscribers responding to RFQs have access to information (such as MSRB trade history and other similar offered side markets) that provide price discovery for both parties involved in a RFQ transaction.

Given that the KBP platform is a means for Subscribers to directly post their pricing and transact electronically, and KBP has no capacity to hold positions or inventory, nor trade for its own account, and acts only as a dealer, in a limited riskless principal[4] capacity to facilitate clearance and settlement between institutions and broker/dealer liquidity providers[5], we question the ability of KBP to conduct the proposed duties described in MSRB Rule G-18. This rule states that a broker's broker must make a reasonable effort to obtain price for the dealer that is fair and reasonable in relation to prevailing market conditions and must employ the same care and diligence in doing so as if the transaction were being done for its own account. To make such a determination would require the firm to know the dealer's client, in addition to understanding their risk tolerance, suitability information and the circumstances which resulted in the decision to buy or sell the security. KBP is of the opinion that Subscribers submitting RFQs would be in the best position to make this determination, as they have access to this information. Furthermore, while KBP does provide its Subscribers with various tools and resources to assist with price discovery, given that KBP does not control or influence the pricing electronically posted by its Subscribers, we cannot see the applicability of this rule to the KBP platform.

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[3] The only time there is human interaction on an RFQ conducted through the platform is as a result of a trade problem that may have occurred after a trade has been consummated (e.g. clearing changes, a retail client sold the wrong bond and both parties to the trade mutually agree to any adjustments).

[4] Riskless Principal Transaction: A transaction in which a broker-dealer, after having received an order to buy a security, purchases the security as principal to satisfy the order to buy or, after having received an order to sell, sells the security as principal to satisfy the order to sell. MSRB Glossary of Municipal Securities Terms, Second Edition (January 2004).

[5] In the case where the two counterparties cannot clear directly, KBP will act as limited riskless principal only for settlement purposes after the purchasing and selling counterparties have been matched and an execution occurs. Transactions effected on the platform, in which KBP is the contra party for settlement purposes, are cleared and settled on a DVP/RVP basis through KBP's fully-disclosed clearing relationship.

KBP does agree with the MSRB's response with respect to the bid-wanted process as outlined in MSRB Notice 2011-18 which states, "draft Rule G-43(b) provides that a bid-wanted conducted in a manner that satisfies the requirements of the rule concerning bid-wanted will generally satisfy the obligation of a broker's broker to use a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions, depending on the specific facts and circumstances of the transaction." While KBP does not operate as a MSBB, the KBP platform operation protocols for its bid-wanted process are generally consistent with the requirements set forth in proposed Rule G-43(c).

In conclusion, Knight BondPoint appreciates effective regulation of the municipal securities market that increases transparency and market efficiency. We respectively request that further clarification is required by the MSRB on the exact nature of firms that qualify for consideration as a broker's broker.

Thank you for providing us with the opportunity to comment on this rule proposal. We would welcome the opportunity to discuss our comments further.

Respectively submitted,

Marshall Nicholson
Managing Director, Knight BondPoint

cc Leonard Amoruso, General Counsel, Knight Capital Group

From: Christopher Allison
Sent: Wednesday, April 20, 2011 4:57 PM
To: Comment Letters
Subject: Notice 2011-18

I have several comments of Draft MSRB rule G-43. My firm M. E. Allison & Co., Inc. has been in the municipal securities business for the past 65 years and I feel that the Municipal Securities Broker's Broker is an efficient tool for brokers to buy and sell Customer and Firm owned bonds in a formal and anonymous manner

G-43(a)(iv) – The proposal for the Broker's Broker to determine fair value is not appropriate. Seller's often put their own and customer bonds out for bid. The selling dealer then makes their own determination whether they believe that the high bid is acceptable to them. I have been the "high" bid on many occasions were the seller has decided that they do not want to sell at the level that I have bid. That is certainly there right and I have done the same on occasions when I am the seller. Municipal Bond markets can move very fast in certain situations. It would be difficult if not impossible for the Brokers Broker to determine a fair value on each bid under each set of unique circumstances.

G-43 ©(vi) – On occasions mistakes are made in any business. Continued good business depends on trust. If a Broker's Broker receives a bid that they clearly believe was made in error I believe they should have the duty to inform the bidder of a perceived mistake. If this is not done the trust between all business partners breaks down and the efficient market for the broker's broker goes away.

It is my hope that the MSRB will take these issues into consideration as you move forward on finalizing Draft MSRB Rule G-43.

Thank you, Christopher

Christopher R. Allison
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From: Bob Barnette

Sent: Thursday, April 21, 2011 12:44 PM

To: Comment Letters

Subject: Notice 2011-18

I would like to submit comments on portions of the draft rule G-43.........I work for a municipal bond dealer as a trader, so I interact with Broker's Brokers on a daily basis. The proposed rules seem to add tremendous unfair and unreasonable burden to the Broker's Brokers, with little or no value added to the process. Specific comments below, in red font:

G-43(a)(iv)

The Broker's Broker is required to determine if a high bid does not represent a fair and reasonable price and to inform the selling dealer if such a determination is made. If the selling dealer desires to execute such a sale they must provide a WRITTEN ACKNOWLEDGEMENT that they understand our assessment and still want to sell the securities. If they do not, we are prohibited from buying the securities.

Comments: Broker's Brokers (I will hereafter abbreviate this as BBs) are not tuned-in to the market enough to determine on a real-time basis if bids are reasonable. They handle too high of a volume of bids to be reasonably expected to provide this advice in a timely manner. BBs cannot be expected to anticipate what prices the buying dealer would be able to sell a bond for, which is a huge factor in their bidding analysis. As a veteran trader that deals exclusively with the street, I am well aware that the bidding process involves many inconsistencies. Some bids are even generated by algorithms and submitted via computer. Is the BB supposed to go back and critique the algorithm that generated that bid? Conversely, what if a bid is much higher than other bids submitted, which of course would benefit the seller. Is the BB supposed to tell the seller that this is not a fair & reasonable price too????

Bottom line, the market is made up of buyers and sellers. Each side of the trade must bear the responsibility and fiduciary duty to judge the appropriateness of prices. There is plenty of analytical information available, such as up to the minute MSRB trade data, for them to utilize in this process. Nobody forces them to accept a bid and sell bonds if they don't like the bid. It is completely unreasonable to expect BBs to get in the middle of this process and provide guidance as to reasonableness of a given bid. Likewise, requiring a selling dealer to provide written acknowledgment of a BBs assessment is also completely unreasonable – what would this process be????? What documentation would be required? Who would have to be authorized to make the acknowledgment?? This would be a complicated, unnecessary mess of red tape that would add NO VALUE to the overall process. Plus, with the sheer volume of bids handled by BBs, requiring them to adopt such a process would be cost-prohibitive. In fact, they would likely have to increase their commissions to pay the labor involved, resulting in lower yields to the sellers.

G-43(c)(vi)

If a Broker's Broker believes that a bid has been submitted in error, they may only contact the bidder if they have WRITTEN PERMISSION from the seller to do so (or given the seller advance disclosure of their procedures to contact a bidder in such instances) AND GIVE ALL BIDDERS THE OPPORTUNITY TO ADJUST THEIR BIDS.

Comments: Another problematic idea. What if the bidder makes a typographical error when entering the bid online, and a simple correction is needed to keep the bidder from over-paying for the bonds? In this situation, is the BB really required to go back to all the other bidders and give them a chance to adjust bids? TOTALLY UNECESSARY!!! Again this places an onerous

administrative burden on the BB. If the bid is judged to be a likely error, what would be the point of notifying the other bidders????? If the bid "stands out" and is noticed, that means it is either too low, or too high. If it is too low, what purpose is served by going to the other bidders? Their chances of buying the bond are improved if someone is too low. If the bid is judged too high, the other bidders are unlikely to want to increase their bids to chase this one – no one wants to chase someone who is clearly overpaying. If a bid seems to be an error, all that should be required is for the BB to be allowed to contact the bidder and confirm their bid. This is by far the most fair way to handle the situation. Keep it simple!

Sincerely,

Bob Barnette
Municipal Trader
National Alliance Securities
Dallas, TX

Dear Sirs:

This letter is written in response to the request for comment on draft rule G-43 (on Broker's Brokers) and associated amendments to Rule G-8 (on books and records), G-9 (on preservation of records), and G-18 (on execution of transactions).

I am gravely concerned that the MSRB's effort to create more transparency through this particular initiative will serve only to jeopardize the current bidding process. This draft proposal suggests that the bidding process, whereby traders provide the bids, is currently flawed. My belief, though, is that the current process, driven by traders, most efficiently and fairly creates a market. Not all bonds are created equal and traders specialize in regions, sectors, credits, etc. to put themselves in a position to intimately know a bond. As a Michigan trader, I would expect to know more about most Michigan bonds than a Broker's Broker on Wall Street. This is not meant to discount a Broker's Broker contribution to the market; rather, it is meant to emphasize the critical role a trader plays in establishing fair market value employing his/her particular expertise.

To disallow a Broker's Broker to "check a bid" [(G-43(c)(iv)] will inevitably cripple liquidity and efficiency further. If a bid is sticking out, it is usually indicative of information overlooked: sinking funds, short calls, etc. Traders work in a fast-paced manner; it's extremely helpful and all-around beneficial to have a 'back-stop' in the event of a misjudgment or error.

The cover bid serves a critical role in price transparency. As a trader, a cover bid helps reinforce that my bid was market level. However, if bonds trade to me with a cover substantially lower, the cover is indication that there may be a problem with my bid. If you remove the Broker's Broker ability to check me, in the very least I will be more reluctant to bid good credits. The weaker credits will suffer even more disregard, in that that many bidders will simply pass rather than buy something with an obscene cover, or worse yet, no cover at all.

Concerning written instructions [G-43(c)(vii)], during the course of a busy trading day, a trader is more likely to pull a bid than frantically create time to fire off written instructions to change it. One would think that verbal instructions from trader, along with Broker's Broker acknowledgment and written confirmation, would be sufficient.

I respectfully submit these comments to the MSRB and appreciate your consideration,

Regards,

Marty Campbell
Senior Director
Municipal Underwriting & Trading
Oppenheimer & Co., Inc.
810 Michigan St.

Port Huron, MI 48060
810-987-5163
marty.campbell@opco.com

From: Jay Potratz
Sent: Thursday, April 21, 2011 1:12 PM
To: Comment Letters
Subject: Notice 2011-18: G-43

Overall:

I believe that many of the changes will result in unintended problems for the Broker-Broker market, with less bids, less liquidity, and many unintended negative impacts on the market, even though the intentions are noble. … Now is the time to discuss the negative potential impacts of the proposed regulations.

Details:

I have contacted people involved in the Broker-Broker market, and have inquired about how the system works. … I am a student of how organizations function, and NOT function, since I studied at the Sloan School of Management at MIT and got my Master's Degree. While at MIT, I took two yeas to study a failed organization, the Boston and Maine Railroad, which was then in Chapter 77 bankruptcy.

The broker-broker market often requires timely response to a request for bids. … Making written communications adds a burden preventing timely response to bid wanted situations. … In particular, proposed regulation G-43(c)(vii) requires a written instructions to change a bid.

No system is perfect. ... Life isn't perfect. … But I firmly believe that the proposed changes will result in a less acceptable system than currently prevails.

Bacground:

I am an Investment advisor who has been buying municipal bonds for the past 23 years for my clients.

In Closing:

Thank you for the opportunity to comment on the proposed regulations.

From: Rich Seelaus
Sent: Wednesday, April 13, 2011 1:37 PM
To: Comment Letters
Subject: Notice 2011-18

Dear Sir / Madam;

- I am writing in response to the proposed rule
- G-43(a)(iv)
  The Broker's Broker is required to determine if a high bid does not represent a fair and reasonable price and to inform the selling dealer if such a determination is made. If the selling dealer desires to execute such a sale they must provide a WRITTEN ACKNOWLEDGEMENT that they understand our assessment and still want to sell the securities. If they do not, we are prohibited from buying the securities.

I think this is dangerous and ill considered. Any asset is worth whatever some other investor will pay for the asset on any given day. The market is the sole determinant of this value. Every time someone interjects a subjective judgment of the value assigned by the market it leads to chaos and inefficient markets. The current housing sluggishness in the US is a perfect example, how many times are sellers heard to say that is not the right value for my house , or the bid is too cheap etc. when it is clearly the collective judgment of the market. In recent years we have seen this scenario played out whether it is mutual fund pricing, bank portfolio values , wall street firms and CDO inventories. It is the task of the regulators to level the playing field and make everyone play by the same rules, it is not to force artificial judgments by brokers about securities prices. We need to trust the market even though we may not like it's verdict.

Sincerely

Richard Seelaus

R.Seelaus & Co., Inc

R. Seelaus & Co., Inc. 25 Deforest Ave Suite 304 Summit NJ 07901 800 - 922 -0584
This communication is for informational purposes only. It is not intended as an offer or solicitatio or sale of any financial instrument or as an official confirmation of any transaction. All market pr information are not warranted as to completeness or accuracy and are subject to change without n Any comments or statements made herein do not necessarily reflect those of R. Seelaus & Co., In its subsidiaries and affiliates. This transmission may contain information that is privileged, confid legally privileged, and/or exempt from disclosure under applicable law. If you are not the intende you are hereby notified that any disclosure, copying, distribution, or use of the information contai (including any reliance thereon) is STRICTLY PROHIBITED.

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600,
Alexandria, VA 22314

April 21, 2011

Dear Ms. Henry,

Thank you for the opportunity to respond to the recent Request For Comment on Draft Rule G-43 and the other associated amendments to Rules G-8, G-9, and G-18.

Regional Brokers, Inc. supports the efforts of the Municipal Securities Rulemaking Board to establish guidelines within which Municipal Securities Broker's Brokers may operate their business. However, RBI disagrees with several of the sections that the proposed Rule G-43 would proscribe. RBI believes that the current rules of the SEC, FINRA, and the MSRB have shown themselves to be sufficient in enabling the SROs to enforce compliance within the market and that this new rule, as written, could cause stress to an industry that is already struggling to find liquidity. RBI also believes that its Written Supervisory Procedures currently fulfill the requirements of the existing rules, and believes that an MSBB operating in the marketplace today would be able to maintain a compliant business operation by following a similar set of WSPs. RBI would be glad to discuss its WSPs with the MSRB, FINRA, the SEC, and other members of the industry.

RBI's business model is very simple; to operate a fairly run auction, seek the best bids in the street that are available for the bonds on that day, and to report those bids to the potential Seller. Once the bid is reported to the Seller, it is RBI's opinion that it is the Seller's responsibility to determine whether or not that bond will trade at the price reported. RBI has no research department, does not commit its own capital in the marketplace, and lacks the information required to know whether a bid suits the needs of a seller.

Because of these limitations, RBI has agreed with the direction of FINRA that, when a bid on an item is suspected to be mistaken (and therefore not bona fide, as required by MSRB Rule G-13), it must be left to the Seller of the bonds to determine whether or not a call can be made to the Bidder in order to verify if it is correct. (RBI notes that this direction to allow only the Seller to determine whether a bid is bona fide will become part of Rule G-43.)

Rule G-43, however, at the same time that it prevents RBI from determining on its own whether a bid is wrong (not bona fide), will change the responsibilities of RBI and make RBI responsible for reporting to the Seller whether or not a bid is "fair and reasonable"; this is in exact

juxtaposition to the requirements that FINRA has imposed when it comes to determining if a mistake has been made on a bid.

The following are RBI's comments on how the Rule, if enacted, should be modified in order to bring standardization and compliance to the industry as opposed to creating obstacles to liquidity in an already distressed market.

Rule G-43 Broker's Brokers

Regarding (a)(iv): Must each bid that is put up to a Broker/Dealer be scrutinized as to whether it is a fair and reasonable bid? The Bid Wanted auction is a process by which bids are turned in randomly, based on a suggested time. If a Seller calls the MSBB to inquire whether or not any bids have been received on their item, the MSBB must report the current high bid [Proposed Rule G-43 (c) (viii)] This will require the MSBB to analyze each bid that is "put up" to the Seller, whether or not it is a bid that the Seller would consider sufficient to trade the bonds. Also, what is the internal supervisory requirement of an MSBB to document that each of these bids has been reported to the Seller as possibly "not fair and reasonable"?

The reference in (a) (iv) to "highest bid received" indicates that the consideration of whether or not a bid is fair and reasonable would only be necessary at the point where the Selling Broker/Dealer has received from the MSBB a bid that is sufficient to cause a decision as to whether or not to sell the bonds. Would then, the "fair and reasonable" discussion between the MSBB and the Selling Broker/Dealer occur only once, and only at the point when the bonds are marked for sale? And, is the written document the responsibility only of the Selling Broker/Dealer?

Regarding (a) (iv): Will there be an expectation on the part of the MSBB that the customer of the Selling Broker/Dealer will be notified that the price received on their bond may not be fair and reasonable? Is there an expectation that the Selling Broker/Dealer's customer is ultimately responsible for deciding if a bond will trade? An MSBB provides the best available price for that security on any given day; ultimately it's the client's decision to hold or sell.

Regarding (c)(i): RBI would suggest that the wording of C (i) should be amended to "A broker's broker must disseminate a bid wanted widely UNLESS REQUESTED TO OTHERWISE BY THE SELLER." (An MSBB is often directed by a Broker/Dealer to work bonds "off the wire" or to stay away from a certain other Broker/Dealer, or to only go to a specific number of bidders or specific bidders, due to the Seller's being in competition with other Broker/Dealers. As written, this section of the rule would prevent the Broker/Dealer from instructing the MSBB to operate the auction in the manner that the B/D would like.)

Regarding (c)(ii): RBI would suggest that C (ii) securities of limited interest... must reach dealers with specific knowledge... should be amended to " should attempt to reach" While an MSBB should attempt to reach dealers with specific knowledge, or the underwriter of the issue, the rule should be written to allow the MSBB the attempt but not the completion.

Regarding (c)(iv): RBI believes that this rule is overly restrictive, and that it is common industry practice to comment to Broker/Dealers as to "where they currently stand", at least as to whether or not their bid is currently being used on a bond. This type of comment is not considered to be preferential.

Regarding (c) (vi): RBI suggests that C (vi) should be amended to allow an MSBB to contact a Bidding Broker/Dealer about their bid for various reasons, including a material change in the bid wanted item (such as a change in the amount), or a change in the description that was advertised (such as the addition of a sinking fund or a call).

Also that the section stating " must be limited to discussions about the characteristics..." should also add the ability of the MSBB to inform the Bidding Broker/Dealer whether or not their bid is being used.

Broker/Dealers should be troubled by the restriction, as currently written, on comments that they may be given during a bid wanted auction. While RBI does not allow any coaching or backing off of bids, RBI does believe that Broker/Dealers should be able to garner information that they need in order to plan for their capital requirements, etc.

Regarding (c)(vii): written instruction... should be changed to allow verbal instruction with both sides documenting the event, not having to exchange written correspondence. (Broker/Dealers should be required to document, internally, each change that they make to a bid entered with an MSBB.) RBI fully supports the documentation of all bids that are verified and changed in an MSBB's system, but believes that as long as both sides of the trade are documented by the respected MSBB and Broker/Dealer, that this is sufficient.

Regarding (d) (i) (F): Must the commission be disclosed at the point of each trade, or is a previously published suggested commission schedule adequate?

Regarding Rule G-8

(xxv) Broker's Brokers... "shall maintain records of all bids for municipal securities that it receives, together with the time of receipt." RBI would suggest that this be changed to reflect

that all bids are entered into an MSBB's bid wanted system in a timely manner, and maintained for the applicable period.

Regarding possible exemptions for Electronic Brokers from this rule or parts of this rule:

The MSRB is requesting comments on the question of whether or not ECNs should be able notify a Bidder of a mistake by means of an automatic transmission based on some sort of "grid".

First, RBI believes that there is not currently any sort of "grid" that is efficient enough to detect improper pricing, especially as regards to thinly traded issues. This inefficiency could have adverse implications on the market place.

Second, any bid that is rejected by a pre-determined "grid" would have the same effect as a voice broker's changing a bid without informing the Selling Broker/Dealer of the change. All ECNs should be held to the same standards as other MSBBs, and should be made to provide documentation to the Selling Broker/Dealer, just as "voice" MSBBs will be required to do.

Third, it would seem possible that a "grid" system could be "gamed" by a Broker/Dealer that constantly submitted high (or low) numbers until the "grid" finally accepted the bid- contrary to the desire of the MSRB that Bidders not be given information or help of this type.

Keeping in mind that one of the reasons for the implementation of Rule G-43 is to ensure that there is more scrutiny of bond prices, and an attempt to prevent bonds from being sold at "below market" prices, it would not seem to make sense to allow any platform to escape having to document a trade done at such a level. While there may be ECNs that have absolutely no human interaction with a Seller or Bidder, it would appear that a loophole could develop for trades to be transacted at unfair prices because traders would be aware that certain platforms would not require documentation. If the goal of the MSRB is to enlist the MSBB community in the effort to prevent bonds from trading at unfair prices, it would appear that trades done through ECNs, without notice to the seller that the bid might not be "fair and reasonable", would be missing this important part of the safety net.

And, for those MSBBs that advertise themselves to be ECNs but incorporate voice brokers as well, RBI sees little difference between its own business model and those of the so-called "alternative trading systems"; both combine internet bidding platforms as well as voice brokers that are involved in conversations with the Seller and Bidder.

In summary, RBI believes that the MSRB should focus on establishing industry standards as opposed to a new rule. RBI also firmly believes that the MSRB could achieve it's goal of

providing fairness in the market place and doing what is best for the retail customer within the boundaries of those rules that are already currently in effect, without further hurting the liquidity of the market. As always, RBI would be available to discuss its ideas further with the Board.

Joseph A. Hemphill III

CEO

H. Deane Armstrong

CCO

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Va. 22314

May 12, 2011

Dear Ms. Henry,

RBI would like to make the following observations now that the MSRB has received comments regarding its pending Rule G-43.

It would appear that there are two main issues that need to be ironed out- the responsibility for "fair and reasonable" pricing as regards to bonds that are put out for the bid with MSBBs, and the ability of an MSBB to contact a bidder regarding a potential error (non-bona fide bid) on an auction item.

RBI would comment as follows-

Regarding the "fair and reasonable" pricing issue, it seems clear that the Broker/Dealer community does not wish to share this responsibility with the MSBBs. It would appear to RBI that the community is saying:

The MSBB has brought us a bid, and we, as a Broker/Dealer, must take the responsibility for deciding if that bid is fair and reasonable. If it is, we can sell the bond. If it is not, we must inform our customer that we do not consider the bid to be fair and reasonable and that we would recommend not selling the bond at this time.

And, regarding the MSBB that brought us the bid, we must evaluate whether that MSBB has done a reasonable job in attempting to obtain a fair and reasonable bid. If we decide that the MSBB has made that attempt, but that a more reasonable bid is just not "out there" in the market at this particular time, we will continue to use that MSBB to run auctions for us. If, however, we determine that the MSBB has done a poor job in seeking the best bid available, and has shown a lack of effort in obtaining a fair and reasonable bid for us, then we will make the decision not to use that MSBB in the future, and that MSBB will eventually either improve its business model or it will go out of business.

This seems, to RBI, to be a reasonable way for the market to operate, and delegates the proper responsibilities of this issue to the proper parties.

Regarding the ability of an MSBB to contact a bidder regarding a possible mistake, it would appear that the Broker/Dealer community supports, overwhelmingly, the allowance of erroneous bids to be corrected, thus not allowing mistakes to be reported through the RTS. RBI would suggest that its current procedures for bid verification would be adequate to handle this issue- that any bid that appears to be erroneous is reported to the selling Broker/Dealer with a request to be able to verify the price that was

quoted by the bidder- that any bid that is changed in an MSBBs system is documented, reviewed by a Supervising Principal, and maintained in the files of that MSBB's CCO for a period of six years.

RBI would also suggest that this documentation be extended to the Broker/Dealer side of the transaction – that any Broker/Dealer that has been asked either for permission to verify a bid, or asked to verify a bid, should also maintain a file of those changes and be ready to provide that documentation to an examiner should there be any question as to why a bid was changed. This system would eliminate the burdensome written inter-communication between the Broker/Dealer and the MSBB, but at the same time would allow the SRO to have access to all justifications for changes made to the bids on an auction.

RBI seeks standardization in the industry- we have long believed that we have been following a stricter set of standards regarding bid verification than the rest of the industry, and we believe that our procedures, if adopted by the industry, would provide a more level playing field in the industry where each MSBB would provide the same information to the bidders, limiting the "help" that MSBBs have been accused of giving to "favored" Broker/Dealers in the past.

Thank you for your time and we look forward to helping the industry move forward with this, as well as an opportunity to improve our own procedures.

Sincerely,

Joseph A. Hemphill III

President and CEO

H. Deane Armstrong

CCO

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2011-18: Request for comment on Draft Rule G-43 (On Broker's Brokers)

Dear Ms. Henry:

RH Investment Corporation (the "Firm") appreciates the opportunity to respond to Notice 2011-18 (the "Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB requests comments on draft interpretive guidance on municipal securities broker's brokers. ("MSBBs"). The Firm is strictly a municipal securities dealer; we deal only in municipal bonds and no other securities. The Firm also has no retail customers.

The Firm supports effective and efficient regulation of the municipal securities markets. However, the Firm's understanding of Draft Rule G-43 ('the Draft") is that the Draft is more an impedance to an efficient marketplace than it is a benefit. The Firm objects to the Draft's definition of the Duty of a Broker's Broker. An MSBB should not make the determination if a bid is fair and reasonable in relation to prevailing market conditions. That responsibility falls upon the seller and MSSBs should be neutral parties. Today, there is ample information available to all sellers to determine if a bid is fair and reasonable. If they should find such information lacking, they are under no obligation or pressure to accept any bid.

The Firm strongly objects to (c) (iv) ("a broker's broker may not give preferential information to bidders…"). If traders do not receive "color" or "posts" on their bids, the lack of information made available to them from the MSSBs will result in traders being more cautious in their bidding and thus sellers will receive fewer and lower bids, making the market less liquid and efficient. In the case of hard to value or thinly traded bonds, traders will be even more cautious in their bidding, resulting in fewer and much lower bids. This is surely not the intended consequence of any regulation. Also, if a bid is "sticking out," a bidder is held accountable for

an error in bidding (and the resulting financial loss) yet a seller is rewarded for such errors as they are "ensured" of receiving at least the market price. There is no protection for the bidder in such cases. This is not fair to the bidder.

With respect to the Conduct of Bid Wanteds, the Firm objects to (c) (v) ("not accepting bids after an imposed deadline"), the Firm believes it is in the best interest of the seller if the MSBBs reflect bids after a deadline which are higher than the best pre-deadline bid. In today's marketplace, it is frequently difficult for traders to meet all bid wanted deadlines because of the quantity of bid wanteds (many of which are given to multiple MSSBs, which makes the task that much more difficult for traders. Our traders bid 300-500 items per day). If a higher price is found for the seller, that is better for the seller and it is the seller's discretion as to whether to accept a late bid or not. It should be the duty of the MSSBs to convey all bids, timely or late…not suppress them.

The Firm also objects to (c) (vii) ("a broker's broker may not adjust a bid without the bidder's written instruction"). This practice is usually performed over the telephone for its speed and precision. To effect the same degree and quality in a written statement would require too much time and effort, putting the bidder at a disadvantage.

The Firm also objects to (c) (ix) ("a broker's broker must check the results of the bid-wanted process against other objective data"). The MSSBs should check the results of the bid-wanted only using the bids it has gathered for that particular item. This proposal puts an onerous responsibility on the MSSBs and takes away from their ability to perform their main task: acquiring bids for their clients. It is the seller who must check the results of the process against other objective data.

The Firm also objects to (d) (i) (H) ("prohibit the broker's broker from providing any person other than a selling dealer client and the winning bidder with information about bid prices.."). As stated earlier, without this "color," traders will bid more cautiously as they have less information to determine what the market price is for any municipal bond and the quality as well as the quantity of bids will deteriorate. "Color" and "posts" are not preferential treatment. They are necessary information that traders rely upon. The Draft seems to be an attempt to move the municipal secondary market in the direction of an open market like the equity market. However, as the Draft currently reads, it is not entirely open nor entirely fair to bidders.

In summary, the Firm has specific objections to the Draft. The Firm's position with respect to MSSBs is that they provide an important and necessary function to the municipal marketplace. The Firm supports a fair bid-wanted process. However, regulation of such a process should not unfairly hurt either the seller nor the bidder and should encourage the best <u>and</u> fair price, not dissuade bidders from providing the best <u>and</u> fair price as the Draft most assuredly would do.

RH

Ms. Peg Henry
April 21, 2011
Page 3 of 3

The Firm thanks the MSRB for the opportunity to comment on this proposal. We would be pleased to discuss these comments in greater detail. If you have any question, please feel free to contact me at (818) 789-8781.

Respectfully,

Andrew L. "Bud" Byrnes III
Chief Executive Officer

RH

MAY-1-20011

ATTN : MSRB

THE ATTACHED IS LOADED WITH ;.....DERIVATION.., ETYMOLOGY...,MORPHOLOGY ....PLUS.. FRAUDULENCY....AND, NEEDS TO BE CHANGED TO A FIXED PERCENTAGE FINANCIAL SERVICE CHARGE........LIKE MOST HONEST ORDERLY BUSINESS COMPANIES..........

Leonard Jack Robbins
Denison-TX-75020

L. J. Robbins

21 Dupont Circle, NW • Suite 750
Washington, DC 20036
202.204.7900
www.bdamerica.org

April 21, 2011

VIA ELECTRONIC MAIL

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

Re: MSRB Notice 2011-18: Request for Comment on Draft Rule G-43 (on Broker's Brokers) and Associated Amendments to Rules G-8 (on Books and Records), G-9 (on Preservation of Records), and G-18 (on Execution of Transactions)

Dear Mr. Smith:

The Bond Dealers of America (the "BDA") is pleased to offer comments on Municipal Securities Rulemaking Board ("MSRB") Notice 2011-18: Request for Comment on Draft Rule G-43 (on Broker's Brokers) and Associated Amendments to Rules G-8 (on Books and Records), G-9 (on Preservation of Records), and G-18 (on Execution of Transactions) (the "Proposal"). The BDA is the Washington, DC based trade association representing securities dealers and banks focused primarily on the U.S. fixed income markets.

The BDA supports the MSRB's efforts to provide guidance to brokers' brokers and supports regulation of the municipal markets that help to achieve market efficiency, encourage liquidity and protect investors. Broker's brokers play an important role providing liquidity in the market. As the MSRB recognizes, a well-run bid-wanted process also has an important role in price discovery. The BDA supports the general thrust of the Proposal and most of its particulars. However, while we understand the concerns of the MSRB that have led to the Proposal, we believe certain aspects of the Proposal do not properly reflect the roles of the different parties and would create inefficiencies in the municipal market that will have an unfavorable impact on investors without providing any real benefit to investors or clients of broker's brokers. Moreover, we caution the MSRB not to impose requirements on this portion of the municipal market that may result in broker's brokers declining to conduct bid-wanteds for smaller lots or lower-rated securities. This is a very important aspect of the municipal market and dealers bid on hundreds and thousands of auctions each day. Broker's brokers have many opportunities and the MSRB's rules should not inadvertently impose requirements that discourage them from conducting bid-wanteds on some of the less liquid securities.

Duty of Broker's Broker to Provide Fair and Reasonable Price Determinations

Broker's brokers provide market liquidity and allow for quick and efficient execution of municipal security transactions by operating an auction process that is fair and providing the broker-dealer with the best bid obtained from that auction process. Under the Proposal, the broker's broker would be required to make a determination as to whether the highest bid received from this process is a fair and reasonable price. If it believes the highest bid is not fair and reasonable, it must disclose that opinion to its client and may not proceed unless the client acknowledges the disclosure in writing.

The BDA notes that the description of the Proposal conflicts with the text of the Proposal. The description says "Draft G-43(a)(iv) *only* requires that the broker's broker notify its client *that it has not been able to determine a fair and reasonable price* for the securities in relation to prevailing market conditions." (emphasis added). Draft G-43(a)(iv), on the other hand, does not mention the inability to determine a fair and reasonable price, but would establish a rule that applies when the broker's broker believes that the highest bid is not fair and reasonable, which requires the broker's broker to reach an opinion about what a fair and reasonable price is. There is, therefore, a clear conflict between the description of the Proposal and the Proposal itself. However, regardless of which rule the MSRB intended to propose, the BDA opposes both because both confuse the roles of the broker's broker and its client, as evidenced by the 2004 NASD fines referred to in Notice 2011-18, and are contrary to the overall thrust of the Proposal, which is to establish rules for a well-run bid-wanted auction that will itself discover the fair and reasonable market price. Both rules also would unreasonably delay the execution of the sale by requiring a determination by the broker's broker that a fair and reasonable price cannot be determined (or alternatively, must be determined and compared to the highest bid) and a written acknowledgement obtained from the client. These formalities will also provide an opportunity for regulators to second-guess the judgment of market participants after-the-fact and with the benefit of hindsight, to which the BDA strongly objects.

The role of broker's brokers is to conduct a bid-wanted or an offering. The role of the client broker is to determine the fair and reasonable price. As the MSRB notes in its description of the proposal, in 2004 the NASD fined eight dealers for relying on prices obtained in bid-wanteds conducted by broker's brokers. It clearly is the responsibility of client brokers to determine a fair and reasonable price. They cannot rely on broker's brokers for that determination under current law, as the 2004 fines demonstrate, and under the Proposal, they could not rely on a broker's broker's opinion that the bids *are not* fair and reasonable but must conduct their own analysis. The Proposal does not relieve client brokers of any burden or provide them – or investors - with any protection they do not have under current law.

Under MSRB Rule G-18, the clients of a broker's broker are registered broker-dealers who have a responsibility when executing a transaction in municipal securities to make a reasonable effort to obtain a price that is fair and reasonable in relation to prevailing market conditions. To have to make the determination not once but twice is inefficient and slows down this process with no increase in benefit to the investor or the

client broker. The responsibility to determine if the price is fair and reasonable does not fall on the broker's broker but solely on the registered broker-dealer client, even if this Proposal were to be adopted. The broker's broker's responsibility is to convey the price it receives from conducting the auction process. The client dealer's responsibility is to determine whether that price is fair and reasonable.

What the proposal does is impose an additional burden on broker's brokers without providing any meaningful benefit. The MSRB justifies the proposed new rule, in part, by saying that "*If* a well-run bid-wanted is an effective means of determining fair market value, there should be few instances in which a broker's broker would need to provide its client or clients with a notice that it could not determine a fair and reasonable price for securities in relation to prevailing market conditions with a reasonable degree of accuracy." (emphasis added). That misses the point. In *every* case, a broker's broker would need to make a determination of a "fair and reasonable" price outside of the bid-wanted process. Otherwise, it could not determine that it could not determine fair and reasonable price (or alternatively, if one follows the text of the Proposal, that the highest bid is not the fair and reasonable price). That determination about a fair and reasonable price would have to be made in every case before the broker's broker could determine whether it needs to send a notice to its client, which the MSRB concedes will be infrequent.

Moreover, the assumption behind the Proposal, which BDA agrees with, is not "*if*" a well-run bid-wanted will discover a fair and reasonable price, but rather *that* a well-run bid-wanted will do so. Other aspects of the Proposal help ensure a well-run bid-wanted and the BDA supports them. Especially because of that, the BDA believes that Draft G-43(a)(iv) is not only superfluous but impedes the bid-wanted process without providing any benefit to clients of broker's brokers or to investors.

Erroneous Bids

Under the proposed Draft G-43(c)(vi), if a broker's broker believes that a bid has been submitted in error, the broker's broker may only contact the bidder if (i) it has written permission from the seller to do or (ii) it gives all bidders the opportunity to adjust their bids after having given the seller advance disclosure of its procedures which include contacting a bidder under such circumstances. In instances where obviously erroneous bids have been submitted, the BDA believes the broker's broker should be allowed to intervene to avoid the possibility of the acceptance of an erroneous bid. BDA understands the MSRB's concern that there may be an opportunity for abuse if broker's brokers are allowed to contact bidders "selectively regarding bid prices prior to the deadline for the submission of bids" but believes the bidder should be notified and able to resubmit if the original bid is clearly erroneous. If the MSRB decides to require written permission from the client before a bidder could be contacted about a clearly erroneous bid, the BDA urges the MSRB to clarify that disclosure to a client by a broker's broker prior to the beginning of the bid-wanted process that it may contact a bidder in the case of a clearly erroneous bid and a decision by the client to continue with the bid-wanted is such permission and that an email exchange satisfies the requirement that the permission be written. Also, the Proposal requires that if one client is contacted because the broker's

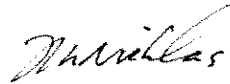
broker has determined that an error was clearly made in a bid, that "all bidders are given the opportunity to adjust their bids". In the case of a clearly erroneous bid, this seems to be unnecessary and would create inefficiency when all the broker's broker is doing is attempting to verify the initial bid and to obtain or establish a fair and reasonable price.

Distribution of Auction Results

The BDA strongly supports the efforts of the MSRB to encourage the wide distribution and availability of auction results. These results provide important pricing information about the depth of the market. All market participants benefit from the availability of this information.

Thank you for this opportunity to present our views. Please do not hesitate to call if you have any questions.

Sincerely,



Mike Nicholas
Chief Executive Officer

RW Smith & Associates, Inc.

April 27, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2011-18: Request for Comment on Draft Rule G-43 on Broker's Brokers and Associated Amendments

Dear Mr. Smith:

RW Smith & Associates, Inc. ("RW Smith") appreciates this opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB") Notice 2011-18 (the "Notice") in which the MSRB requests comments on draft Rule G-43, and the associated amendments to Rules G-8, G-9, and G-18 regarding municipal securities broker's brokers ("MSBBs"). RW Smith has also participated extensively in the drafting of the comment letter on the proposed rule being submitted by the Securities Industry and Financial Markets Association ("SIFMA") and strongly supports the views contained therein. In addition to the SIFMA comment letter, we believe that aspects of the proposed rule pose substantive risks to the efficient operation of the municipal securities secondary market, especially the retail sector of this market, and are worthy of an additional underscoring response.

To begin, RW Smith believes that the current MSRB rule set is appropriate for the governance of transactions effected in the secondary interdealer municipal market and questions the necessity of layering on disruptive and inefficient rules. We would point to the enforcement cases cited by MSRB as an example of the regulatory framework and system working as intended. Audits were performed, violations discovered, investigated, enforced upon, and press releases were released notifying the industry and public of noted violations and sanctions. Based on those enforcement actions and with a specific eye to the transgressions noted in the summaries, broker's brokers around the country reviewed internal policies and procedures to assure compliance with all applicable MSRB rules and the new interpretations pertaining to the broker's broker business model. In the end, we believe the regulatory framework worked exactly as intended with positive consequences to the market and investing public, and do not believe the proposed regulation is necessary or appropriate. Further, we are concerned the proposed rule will negatively affect liquidity in the marketplace, specifically in the retail sector of the market, and that elements of the proposed rule are anti-competitive.

<u>Definition of a Broker's Broker</u>
The Municipal Securities Broker's Broker committee at SIFMA submitted an updated and accurate definition of the broker's broker business model, so did SIFMA in their G-43 comment letter last fall, and both attempts at establishing a baseline definition of the business model have been rebuffed. It is unclear how the regulatory agency intends to regulate a business model that it

has yet to define. The SIFMA MSBB committee recognized this fundamental issue early on and has attempted on numerous occasions to work with the MSRB in good faith to help them define the sector in an effort to provide the foundation from which to apply the current rule set. We are the people who actually know what this business model is, how it functions every day in the marketplace, and how it needs to be defined to prevent any broker's broker firms from being able to "escape classification as a broker's broker" and we are excited to work with the MSRB on this subject. RW Smith (and a host of other broker's broker firms) remains ready to work with the MSRB on this matter because we believe this is where the conversation needs to start, and then expand into rule set application.

RW Smith respectfully proposes the MSRB update the definition of a broker's broker, as a foundational piece of regulation from which all current applicable rules should be applied, using the updated and accurate definition created by the SIFMA MSBB Committee. This comprehensive definition of a broker's broker will promote the clarity that the MSRB is seeking; the role and limited duties & responsibilities of the broker's broker would be known and understood by all market participants. Further, a firm failing to comply with the definition would not be permitted to "hold itself out as" a broker's broker.

Agency vs Principal
Broker's brokers execute transactions on the broker desk in either agency capacity or riskless principal capacity, but never in principal capacity. Broker-dealers execute proprietary transactions in principal capacity, broker's brokers however are restricted from maintaining securities positions and do not execute transactions in principal capacity.

When it comes to reporting the transactions into the RTRS brokers who execute riskless principal transactions are forced to report their trades in as principal trades, but this is a technicality and only occurs because the MSRB did not create a riskless principal reporting code. But let's not let a system code confuse the situation: broker's brokers do NOT execute their transactions on the broker desk in principal capacity – ever. If they do, they are not a broker's broker, they are a broker-dealer affecting trades for their own account.

Pre-Trade Written Disclosures
The proposals for pre-trade written disclosures throughout this Notice would discourage dealers from committing capital to the secondary market, would slow down trading (if not prohibit it in many instances), and would likely lead to a substantial loss of liquidity in the marketplace.

We would like to specifically comment on the MSRBs statement that "most retail customers would prefer a better price to a speedy transaction" – we found that statement to be dismissive of the point being made by SIFMA in their comment letter and wholly inaccurate in our vast real-world experience as a leading interdealer broker. The scenarios that drive bondholders to bring their securities to market for potential liquidation are as varied as the individuals who own the securities. There are many, many instances when speed of execution is the driver of a transaction, not price, and dealers across the country brought this point up to us after reading the MSRBs rule proposal response to comment letters document.

Bid Verification on Suspected Errors
RW Smith agrees that if an MSBB believes a bid has been submitted in error that before they contact the bidder they should either get permission from the seller or provide prior notice to the seller of their procedures on the handling of suspected erroneous bids. The proposal suggests that all bidders should be contacted, not just the possibly erroneous bid that will be given to the seller for consideration of liquidation, that is a waste of everyone's time and does not positively affect the outcome of the auction process.

The solution to the MSRBs main area of concern (integrity of the auction process) is simple, draft an Interpretation wherein all broker's brokers are advised (read required) to provide prior written notice to the seller of the securities what their policy is regarding bid verification. Broker's brokers are intrinsically circumspect with bid verification, and this is aside from their company's restrictive policies on this subject, because backed-off bids do not typically buy bonds. Nowadays brokers verify bids only when they believe a mistake may have been made in the bidding calculation process—for example, this happens daily with bids coming through Fabkom where bidders are scrolling through thousands of bid wanted items from various firms and they miss a call feature, bid the wrong line item, or just fat finger their online bid.

Brokers have integrity, let them do their job and protect the potential seller (and market) from a bad trade.

Further, requiring "written instruction" to correct a mistake on a bid is unnecessary and needlessly adds work for no reason; it would delay the process and burden the bidder with no improvement to liquidity, efficiency, or price transparency. By the way, RW Smith has designed an innovative trading platform with Zia Corporation and our system records all bids received, who entered the bid and the time stamp, any amendments to those bids, who made those edits and when, along with the reason why any bid was changed or withdrawn. To our knowledge, all reputable broker's broker maintain full and accurate books and records, including complete bid pad archivals.

Finally, RW Smith holds that rulemaking that is written for and applied only to the voice broker/hybrid model and not to the electronic trading platforms is anti-competitive.

Rule G-18
The Proposed Guidance regarding Rule G-18 not only provides additional guidance to help MSBBs in meeting their obligations under Rule G-18, but also substantially modifies the current rule. We believe that this proposal inappropriately places the primary burden of determining whether a transaction should occur on the MSBB, rather than on the sellers of securities. The MSBB's role in these transactions is to seek to provide their trading counterparties with information about the market for the securities in question at the time in question. The determination of whether a resulting high bid is fair, especially in a market as thinly traded as the municipal securities secondary market, is inherently subjective, and is one which the seller is clearly in a better position to make, and which the MSRB requires that dealers make when acting as principal for their customers.

Broker's brokers are not traders. Both broker's brokers and traders are clear on this point, however it does not appear the MSRB is clear on the distinction between the two roles in the marketplace. Is it the role of a broker's broker to clearly and completely communicate the specifics of the information and data they have acquired in the pursuit of performing their job – absolutely. Is it the role of the broker's broker to determine fair market value of a security based on the limited scope of their picture (MSRB historical pricing, internal historical pricing, and the current bid pad which typically does not contain all of the bids on an item because broker's brokers are almost always "in competition away", meaning the originator of the bid wanted has pieces of the market picture that the broker's broker does not have access to) and subsequently advise a professional bond trader as to whether or not they should buy or sell their positions – no. A broker's broker acts strictly in the limited capacity of an intermediary in the interdealer market. The role of a broker's broker is and has always been to properly and fairly conduct a bid wanted auction; the fundamental responsibility of the broker's broker is to ensure that the auction is widely disseminated (unless distribution is restricted by the seller) and well-run.

The pre-trade requirements proposed by the MSRB are untenable and it is universally agreed by knowledgeable market participants the real-world effect of the application of this rule proposal will strip liquidity from the market. Specifically, retail market participants and especially those desiring the liquidation of their small, odd lot positions will suffer the brunt of this loss of liquidity. The negative impact on the retail market holds the distinct possibility of deterring participation in the municipal fixed income market in general, which will then bleed into and affect the primary market. Loss of liquidity may impede the ability for issuers to raise capital; we see the likely loss of liquidity as something that will throw off ripples that will most likely touch all corners of the municipal bond market.

We are confident the unintended consequences mentioned, along with many others not enumerated herein, are surely not the intent of the Board, but we feel compelled to mention them so they are not overlooked.

Rule G-17

RW Smith agrees with the Proposed Guidance's statement that, like all other municipal securities dealers, Rule G-17 applies to MSBBs, and that all dealers have an obligation not to act in "any unfair, deceptive or dishonest manner" in the conduct of their securities business.

MSBB's and Non-Dealer Counterparties

Broker's brokers are not only procedurally bound, but are ethically bound to treat all counterparties the same in the execution of their responsibilities as a broker's broker, whether they are broker-dealers, dealer banks or institutional accounts. (To date we do not know of any broker's brokers or interdealer brokers in the municipal market who are executing transactions directly with retail customers, which is why we have not listed retail accounts here.) MSRB proposes that broker's brokers be required to restrict the flow of information and data to institutional customer contra-parties; RW Smith does not agree with the MSRBs attempt to bifurcate the market through preferential treatment to the dealer community and, point of fact, believes it would be an anti-competitive move against institutional customers.

<u>Electronic Trading Systems</u>
RW Smith completely agrees with SIFMA's position that the MSRBs request for comment on the standards to be applied to electronic trading systems is anti-competitive. Imposing less stringent requirements on electronic trading systems would give them an unfair advantage over traditional broker's brokers.

If the Board continues down this path, we would request a detailed explanation of how excluding electronic MSBBs from certain provisions of the proposed rule would benefit the market and the investing public. We would also request the Board address the anti-competitive issue that would clearly exist if they persisted with granting preferential treatment to electronic trading systems over traditional broker's brokers. Finally, we would like to ask the Board to specifically address the issue of electronic MSBBs that are owned by a dealer or multiple dealers, as well as the possible conflicts of interest with members of the Board who may work for some of these dealer-owners.

It seems prudent for the Board to avoid anti-competitive rule-making so we would oppose this approach and recommend the Board move away from this type of preferential treatment to favored market participants.

Thank you, again, for the opportunity to comment on these important matters and we would like to reiterate that, in addition to this comment letter, RW Smith participated in and fully supports the SIFMA comment letter.

Sincerely,

Paige W. Pierce

Paige W. Pierce
President & CEO
RW Smith & Associates, Inc.

April 29, 2011

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

Re: MSRB Notice 2011-18: Request for Comment on MSRB Draft Rule G-43 and Associated Amendments to Rules G-8, G-9, and G-18

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2011-18[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB requests comment on draft Rule G-43, and associated amendments to Rules G-8, G-9, and G-18 (the "Proposed Rule"), regarding municipal securities broker's brokers ("MSBBs"). The concepts embodied in the Proposed Rule were first proposed by the MSRB in September 2010[3] (the "Proposed Guidance").

Please note: We are taking the extraordinary step of submitting two comment letters regarding the Proposed Rule. As explained more fully below, this letter was drafted with significant input from a variety of broker-dealers (wire houses, mutual fund affiliates, and others) who regularly trade with MSBBs to meet their municipal securities trading needs (the "Retail Dealers"). Our other comment letter was drafted with significant input from MSBBs responsible for over 90% of the inter-dealer trading in municipal securities (the "SIFMA MSBB

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1 The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

2 MSRB Notice 2011-18 (Feb. 24, 2011).

3 MSRB Notice 2010-35 (Sept. 9, 2010).

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Letter"). Given the potential impact of the Proposed Rule, we ask that each of these letters be given careful consideration.

SIFMA supports effective and efficient regulation of the municipal securities markets that helps to aid market liquidity in a manner consistent with customer protection. However, we have become extremely concerned about the MSRB's commitment to adopting, through the Proposed Rule, the concepts embodied in the Proposed Guidance. In our comment letter on the Proposed Guidance we sought to identify what we believed were the potentially serious negative consequences that many aspects of the Proposed Guidance could have on the business of MSBBs, and therefore on the municipal securities secondary market (the "Market"). We respectfully submit that the concerns noted in our comment letter regarding the Proposed Guidance persist with equal force in connection with the Proposed Rule.

Having had the opportunity to consider the Proposed Rule, we have come to question whether any new MSRB rule directed solely at MSBBs is warranted. As discussed more fully below, we do not believe that the enforcement actions cited by the MSRB as supporting the need for additional rules are sufficient to that purpose. In addition, we are concerned that the Proposed Rule could have a significant unintended negative impact on retail transactions and transactions in thinly-traded issues. As described more fully below, these parts of the Market are among the less liquid, and we are concerned that what may appear to be minor impediments to liquidity when considered individually against the breadth of the Market as a whole may have severe consequences for the less liquid, but very important, retail and thinly-traded segments of the Market.

We therefore respectfully request that the MSRB withdraw the Proposed Rule, and continue to focus its resources on efficient coordination with the Financial Industry Regulatory Authority ("FINRA") on the enforcement of existing MSRB rules.

<u>SIFMA is Submitting Two Comment Letters on the Proposed Rule</u>

SIFMA's comment letter on the Proposed Guidance (the "Proposed Guidance Letter") purposefully analyzed the Proposed Guidance from the perspective of the MSBBs, as they were the parties most directly impacted by it. And through that perspective SIFMA also sought to highlight the likely impacts of the Proposed Guidance on the Market in general. We believe that this may have given the impression that these concerns were not shared outside of the MSBB community. If so, that impression is false.

In order to demonstrate the seriousness of the securities industry's concerns regarding the Proposed Rule, SIFMA is filing today two comment letters

regarding the Proposed Rule, this letter and the SIFMA MSBB Letter. SIFMA hopes that by submitting both of these letters the breadth and seriousness of the concerns in the securities industry regarding the Proposed Rule will be clearly demonstrated.

Background

The Retail Dealers reviewed both the Proposed Guidance Letter and the SIFMA MSBB Letter in connection with participating in the drafting of this letter. While this letter does not necessarily adopt every position set forth in those letters, it agrees with their overriding conclusion: the Proposed Rule has the potential to do unintended, but significant, harm to the Market. Therefore, we also agree that the Proposed Rule should be withdrawn, and the trading of municipal securities between MSBBs and Retail Dealers should continue to be judged under existing MSRB rules. We also believe that, should the MSRB decide to move forward with a rule focused on the activities of MSBBs, the aspects of the Proposed Rule *most* potentially harmful to the efficient operation of the Market should not be included.

Prior Enforcement Actions

The MSRB places great emphasis in the Notice on the importance of the prior enforcement actions against MSBBs.[4] As the primary trading counter-parties with MSBBs, we echo the concerns of the MSRB regarding the conduct that led to these enforcement actions. But these enforcement actions lead us to draw a much different conclusion than does the MSRB: we believe that they demonstrate that existing standards of conduct were not being met, and that the MSBBs had been in need of regulatory-enforcement attention. We believe that such attention should appropriately continue, just as it should regarding other broker-dealers, to ensure that the investing public continues to be able to rely on the integrity of the municipal securities market. We do not believe, however, that these enforcement actions provide sufficient justification for rulemaking directed solely at MSBBs, especially when the Proposed Rule may significantly impede the operation of the Market, to the ultimate detriment of the retail investing public.

Principal Objections to the Proposed Rule

The following comments set forth our principal objections to the Proposed Rule. We note that the fact that we do not discuss other provisions should not be

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[4] Notice, footnote 1.

read as an endorsement of those provisions. The provisions discussed below are intended to provide the MSRB with additional, specific input to help illuminate what the Retail Dealers believe are the substantial risks inherent in these aspects of the Proposed Rule.

We also hope that the following comments will be read in the proper context. The Market is characterized by an extremely large number of issuers, many of whom issue securities on an infrequent basis. On any given day, a Retail Dealer that is active in the Market can have between 2,000 to 5,000 items to potentially bid upon, and therefore review, and may eventually bid upon hundreds of these items. That same Retail Dealer also could have a number of items out for bid, for which it will need to devote additional attention. Therefore, we believe that any impediments to trading in what is already a labor-intensive market must be carefully reviewed to ensure that the burdens to liquidity are justified.

Written Notice/Acknowledgement Provisions

We cannot overstate the concern that we have with the provisions of the Proposed Rule that impose new pre-trade written notice and/or acknowledgement requirements on certain transactions in the Market.[5] Such requirements are inconsistent with the efficient operation of the Market, *especially when applied to retail-size blocks and transactions thinly-traded issues.* Retail Dealers already expend significant resources on post-trade operational and compliance systems, including best-execution review systems, in order to ensure fair treatment of customers and compliance with existing rules.

We believe that the imposition of pre-trade written notice/acknowledgement requirements will inordinately increase the cost of these trading activities. We can state unequivocally that additional resources will need to be developed to deal with the tracking of these notices, the documentation of the determination of what action to take in response to a fair price notice from an MSBB, and the supervision of that decision-making process. All of these issues are more fully discussed directly below.

MSBB Fair Price Determination and Notification Process

The requirement in Rule G-43(a)(iv) of the Proposed Rule that MSBBs review the results of each bid-wanted to determine whether the resulting price is fair and reasonable is the most problematic substantive provision in the Proposed Rule, because the process is designed to occur pre-trade, and because we believe

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[5] *See* Rule G-43(a)(iv) and (d)(i)(H).

that we are better situated to review the results of the bid-wanted process for this purpose. When a Retail Dealer receives the high bid from an MSBB on a bid wanted, it reviews that bid price as *one piece of information* in deciding whether to execute that sale at that price. As the MSRB states in the Notice, the Retail Dealers generally make substantial investments in their municipal securities departments in the areas of trading and analysis, and that therefore Retail Dealers can analyze the prices resulting from bid-wanteds.

We also note that while the MSRB is likely correct that the vast majority of Market transactions will not be subject to this provision of the Proposed Rule, we are concerned that many transactions in the less liquid sectors of the Market may be. For example, we are concerned that adding a pre-trade bid-wanted price review will substantially impact the trading of retail size orders and transactions in thinly traded securities, as these types of transactions are the most likely to result in a high bid for which MSBBs will have difficulty in making a fair price determination. This is the case because retail size orders are subject to significant trade-price variations on a day to day basis, as bidders interested in these size orders regularly move in and out of the market, and the absence of one or two bidders from one day to the next could have significant impact on the high bid. In addition, thinly-traded issues do not, by their nature, provide meaningful recent transaction executions against which to judge the result of a bid-wanted. We believe that requiring MSBBs to analyze the high bids in these bid-wanteds will result in a substantial number of these transactions being subject to the analysis, notification and written acknowledgement requirements of the Proposed Rule, further impeding liquidity in these parts of the Market.

We also are concerned that, if the Proposed Rule is adopted, Retail Dealers will be subject to second-guessing on every executed transaction in connection with which they were notified by the MSBB that it could not make a fair price determination. Given that Retail Dealers will be required to defend these transactions to regulators (or plaintiffs' attorneys) operating with the benefit of hindsight, we believe that the amount of diligence required to analyze the price of these transactions, document the results of that diligence, and subject those determinations to appropriate supervisory review would greatly outweigh the financial benefit to the Retail Dealer of effecting the transaction, further impeding liquidity for retail size orders and thinly-traded issues.

The likely practical result of this state of affairs would seem to be that Retail Dealers would be forced to make a determination along the lines of the following: either the MSBB's determination was clearly erroneous, in which case the Retail Dealer will consider executing the trade (but may not do so in all cases, based upon a risk assessment), or the trade with the client will not be executed. We also note that this situation would not necessarily be cured by putting the securities out to a different MSBB or trading system (assuming that such a

process was feasible for single retail orders), because the price resulting from that secondary process would *still* need to be analyzed in light of the first price received to determine whether it differed sufficiently from the result of the first bid-wanted to defend the decision to execute the transaction with the customer.

Based on the foregoing, we believe that requiring the MSBB (acting in a traditional broker capacity) to judge the fairness of a specific bid received for every bid-wanted, and in certain cases initiate a process with the Retail Dealer prior to the execution of a transaction, which the Retail Dealer would need to then analyze and respond to in writing to complete the process, also prior to the execution of the transaction, is likely to result in fewer of these transactions being executed. And for the reasons set forth above, we believe that this unintended consequence is most likely to impact retail transactions and transactions in thinly-traded securities, which are already among the less liquid parts of the Market.

We also request that the MSRB consider whether the reduction of liquidity in retail orders and thinly-traded securities could have implications beyond the Market. For example, if thinly-traded securities become even harder to trade, would issuers of securities likely to be thinly traded be required to disclose in future offerings how difficult it may be to liquidate a security purchased in the offering? Could similar disclosure become generally required for retail investors purchasing in offerings? If so, what likely impact could the increased illiquidity of these types of positions have on issuers' ability to raise money in the future?

Specific Restrictions on Bid-Wanteds

Rule G-43(c) both requires and prohibits certain activities in connection with the conduct of a bid-wanted. We note that, most importantly, this section does not reflect that the Retail Dealer has any ability to direct or restrict the conduct of a bid-wanted in a manner consistent with the Proposed Rule. In order for an MSBB to efficiently serve its Retail Dealer clients, it must be able to conduct the bid-wanted *as directed by the Retail Dealer*. Retail Dealers are in the best position to determine whether specific restrictions on a bid-wanted will have the likely effect of improving the process.

Retail Dealers believe that it is imperative that all bidders in a bid-wanted be treated fairly, and in a consistent manner. However, we believe that the proposed restrictions prohibit communications that are necessary for efficient bid-wanteds. For example, Rule G-43(c)(iv) effectively prohibits the MSBB running a bid-wanted from letting bidders know whether they are likely to be used in a bid-wanted. If a bidder knows he is unlikely to be used in a bid-wanted, he can deploy that capital to a different bid-wanted. If not, that capital will necessarily be out of the market until that transaction is concluded. Providing this type of information allows bidders to effectively deploy their capital during the trading

day, to the benefit of the market. We also note that this provision could also be construed to prohibit MSBBs from providing information to potential sellers or bidders about the general nature of the market as they perceive it on a given day ("Market Color"). We believe that such Market Color is important to the efficient operation of the Market. We request that the MSRB specifically consider the effect that this rule provision could have on liquidity in the market.

In addition, Rule G-43(c)(vi) prohibits MSBBs from contacting bidders *even in cases where the MSBB believes that the bid is clearly erroneous* unless the MSBB (i) receives permission from the Retail Dealer selling the bonds, or (ii) notifies its clients in advance that such contacts may be made, and all other bidders are also given the opportunity to adjust their bids. We ask that this provision be reviewed, as we believe it may lead to an increase in transactions based on clearly erroneous bids, as well as unintentionally lead to bidder behavior that would be to the detriment of the seller. Lastly, Rule G-43(c)(vii) prohibits an MSBB from adjusting a bid without the bidder's written acknowledgement, so that a bidder's oral instructions are insufficient. We are concerned that if adjusting or correcting bids is subject to a written instruction requirement, bidders may be inclined to simply withdraw their bids rather than remaining in a bid-wanted for which they have submitted an erroneous bid and following procedures to adjust their bids.

Request for Comment Regarding Electronic Trading Systems and MSBBs with Customers

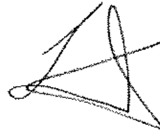
We agree with the position set forth in the SIFMA MSBB Letter that the MSRB's request for comment regarding more permissive rules for electronic trading systems is anti-competitive. As the primary customers of MSBBs (and other Market trade-execution counterparties), Retail Dealers need multiple venues through which to seek to execute securities transactions. Rules that favor one trading venue over another present the risk that the non-favored venues will become less robust, therefore limiting the options available to the Retail Dealers in the future. For these reasons we believe that the there should be no distinctions made in the application of the Proposed Rule, should one be adopted, to any entity that meets the definition of MSBB without regard to the ownership of that entity, or whether that entity is a traditional MSBB, an electronic trading system, or a hybrid of the two.

We also agree with the MSRB's statement that prohibiting MSBBs from having customers might be viewed as anti-competitive, and we do not believe that such a prohibition is warranted. We do believe, however, that MSBBs that have customers should be subject to the same minimum net capital requirements as a municipal securities dealer that has customers (but does not carry customer accounts).

* * *

We wish to thank the MSRB and its staff for their work in developing the Proposed Rule and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposed Rule. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Respectfully,



Leslie M. Norwood
Managing Director and
Associate General Counsel

Invested in America

April 29, 2011

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

Re: MSRB Notice 2011-18: Request for Comment on MSRB Draft Rule G-43 and Associated Amendments to Rules G-8, G-9, and G-18

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2011-18[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB requests comment on draft Rule G-43, and associated amendments to Rules G-8, G-9, and G-18 (the "Proposed Rule"), regarding municipal securities broker's brokers ("MSBBs"). The concepts embodied in the Proposed Rule were first proposed by the MSRB in September 2010[3] (the "Proposed Guidance").

Please note: We are taking the extraordinary step of submitting two comment letters regarding the Proposed Rule. As explained more fully below, this letter was drafted with significant input from MSBBs responsible for over 90% of the inter-dealer trading in municipal securities. Our other comment letter was drafted with significant input from a variety of broker-dealers (wire houses, mutual fund affiliates, and others) who regularly trade with MSBBs to meet their municipal securities trading needs (for the purposes of this letter, "Retail

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] MSRB Notice 2011-18 (Feb. 24, 2011).

[3] MSRB Notice 2010-35 (Sept. 9, 2010).

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Dealers"). Given the potential impact of the Proposed Rule, we ask that each of these letters be given careful consideration.

SIFMA supports effective and efficient regulation of the municipal securities markets that helps to aid market liquidity in a manner consistent with customer protection. However, we have become extremely concerned about the MSRB's commitment to adopting, through the Proposed Rule, the concepts embodied in the Proposed Guidance. In our comment letter on the Proposed Guidance we sought to identify the potentially serious negative consequences that many aspects of the Proposed Guidance could have on the business of MSBBs, and therefore on the trading of securities in the municipal securities secondary market (the "Market"). We respectfully submit that the concerns noted in our comment letter regarding the Proposed Guidance persist with equal force in connection with the Proposed Rule.

Having had the opportunity to consider the Proposed Rule, we have come to question whether any new MSRB rule directed solely at MSBBs is warranted. As discussed more fully below, we do not believe that the enforcement actions cited by the MSRB as supporting the need for additional rules are sufficient to that purpose. In addition, we are concerned that the Proposed Rule could have a significant unintended negative impact on retail transactions and transactions in thinly-traded issues. As described more fully below, these parts of the Market are among the less liquid, and we are concerned that what may appear to be minor impediments to liquidity when considered individually against the breadth of the Market as a whole may have severe consequences for the less liquid, but very important, segments of the Market.

We therefore request that the MSRB withdraw the Proposed Rule, and continue to focus its resources on efficient coordination with the Financial Industry Regulatory Authority ("FINRA") on the enforcement of existing MSRB rules.

<u>SIFMA is Submitting Two Comment Letters on the Proposed Rule</u>

SIFMA's comment letter on the Proposed Guidance (the "Proposed Guidance Letter") purposefully analyzed the Proposed Guidance from the perspective of MSBBs, as they were the parties most directly impacted by the it. Through that perspective SIFMA also sought to highlight the likely impacts of the Proposed Guidance on the Market in general. We believe that this may have given the impression that these concerns were not shared outside of the MSBB community. If so, that impression is false.

In order to demonstrate the seriousness of the securities industry's concerns regarding the Proposed Rule, SIFMA is filing today two comment letters regarding the Proposed Rule. This letter was drafted with significant input from MSBBs, and our other letter was drafted with significant input from Retail Dealers. SIFMA hopes that by submitting both of these letters the breadth and seriousness of the concerns in the securities industry regarding the Proposed Rule will be clearly demonstrated.

As noted above, we believe that the concerns we noted in our comment letter regarding the Proposed Guidance persist with equal force in connection with the Proposed Rule. While we reiterate generally all of the concerns that we noted in our comment letter on the Proposed Guidance (a copy of which is attached), and request that the Proposed Rule be withdrawn, we are also taking this opportunity to restate our objections to what we believe are the most potentially harmful aspects of the Proposed Rule.

Need for Proposed Rule

The Background section of the Notice begins as follows:

> Both Securities and Exchange Commission ("SEC") and FINRA enforcement actions have highlighted broker's broker activities that constitute clear violations of MSRB rules. The MSRB recognizes that some broker's brokers make considerable efforts to comply with MSRB rules. Given the nature of the rule violations brought to light by SEC and FINRA enforcement actions, however, the MSRB determined that additional guidance and/or rulemaking concerning the activities of broker's brokers was warranted.[4]

We respectfully question how the fact that a group of MSBBs were sanctioned for "clear violations" of existing rules can lead to the determination that *additional* rules are needed. By the MSRB's own admission, there are existing rules that govern all of the violative conduct sanctioned by the SEC and FINRA.

Footnote 1 to the Notice indicates that the enforcement actions relied upon by the MSRB as the basis of the Proposed Rules included primary violations of MSRB Rules G-13, G-14, and G-17, as well as violations of Rules G-8, G-9 and G-28. We believe that this argues against the need for any additional rulemaking.

4 Notice, p.1.

It appears that FINRA and the SEC had ample rules to look to and judge the conduct of the MSBBs. The Notice does not provide any examples of conduct that was deemed to be inappropriate by the MSRB or FINRA, but that FINRA was unable to sanction. We respectfully submit that examples such as these would be needed to support the contention that additional rules are warranted.[5]

We also request that additional follow-up be undertaken by the MSRB, working in conjunction with FINRA, to determine whether the types of conduct that gave rise to the sanctions continues to be engaged in by MSBBs. SIFMA believes that in certain cases, continued violations of existing rules of general applicability may justify the promulgation of new rules aimed at specific conduct or actors. We do not believe that finding a number of rule violations of existing rules *at a single point in time* should serve as justification for additional rulemaking, in the absence of evidence that the conduct has continued.

Proposed Rule G-43

We believe, as described in the preceding section of this letter, that the rationale for the Proposed Rule needs to be carefully reassessed, and that the Proposed Rule should be withdrawn. That being said, we are also reiterating the following points from our comment letter on the Proposed Guidance, discussed here as applied to the Proposed Rule, in order to stress our belief that these aspects of the Proposed Rule will substantially negatively impact the operation of the Market, to the ultimate detriment of retail investors and owners of thinly-traded municipal securities.

Duty of Broker's Broker

Rule G-43(a) of the Proposed Rule sets forth the duties of MSBBs. Section (a)(i) of Rule G-43 states that an MSBB "shall make reasonable efforts to obtain a price that is fair and reasonable in relation to prevailing market conditions" and that it must "employ the same care and diligence in doing so as if the transaction was being done for its own account." We again stress that the conduct of a bid-wanted is subject to the control of the seller of securities, the Retail Dealer, and that any statement regarding MSBBs' duties in connection with a bid-wanted should reflect this. For example, there may be instances in which the Retail Dealer needs to receive bids in a short timeframe, and may direct the

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[5] We note that the MSRB's adoption of Rule G-37 appears to have been an example of the MSRB being concerned about conduct for which there was no regulatory remedy. The adoption of a rule in that case seems much more warranted than in this case. See, MSRB Reports, Vol. 11, No. 3, Sept. 1991, and MSRB Reports, Vol. 14, No. 1, Jan. 1994.

MSBB to set a short sharp time. MSBB's should be able to follow these directions without second-guessing the Retail Dealer, and report back to the Retail Dealer the best bid received. The Retail Dealer can then decide whether the price received is reasonable, based on all of the information that it has (including information about its customer's needs). Taking this flexibility away from the Retail Dealer will inject unnecessary inefficiency into the Market.

Section (a)(iv) of Rule G-43 embodies the concept that MSBBs are responsible for determining whether the highest bid received in a bid-wanted "does not represent a fair and reasonable price in relation to prevailing market conditions within a reasonable degree of accuracy." This provision puts the MSBB in the position of analyzing the price resulting from *every* bid-wanted it conducts to determine whether the price is not fair and reasonable. This standard changes the MSBB's obligation set forth in Section (a)(1) of Rule G-43, which is a processed-based obligation, to an outcome-based obligation. As we stated in Proposed Guidance Letter, Retail Dealers are in a superior position to make these determinations due to the customer information they have, the superior resources they possess regarding trading and analysis, and the relatively few numbers of bids that they would need to review.

We believe that the relative imbalance of this burden deserves careful consideration by the MSRB. For example, on an average day a large MSBB can have 2,000 items out for bid, which were received from an average of 200 or 300 Retail Dealers. Under this scenario, the MSBB would have the primary responsibility to review 2,000 high bids to make a "fair and reasonable" determination, while its average Retail Dealer counterparty would have to review 10 or 15 high bids for the items it put out. In light of this, we believe that imposing this obligation on both parties to the transaction, with only limited consideration of how conflicts are to be resolved, and without considering the potential for retail customers' orders not being executed, is not warranted at this time. If a fair price determination is to be made, we believe that it can most efficiently be made by the Retail Dealers.

Section (a)(iv) of Rule G-43 also is the first instance in the Proposed Rule of a written notice and/or acknowledgement scheme. We again stress our belief that the implementation of written communication requirements will have a substantial negative impact on trading in the Market, both slowing down the execution of individual trades, and causing less trades in the aggregate to be executed. In its discussion of this issue in the Notice, the MSRB stated its belief that "*most* retail customers would prefer a better price to a speedy trade" (emphasis added). We question both the basis for, and the relevance of, this belief. First, the MSRB's contention regarding customers' preference for a "better" price ignores the fact that speed of execution is an aspect of the quality of

the execution of a securities transaction. Clients have many reasons for deciding to sell their securities, some of which may have nothing to do with specifically when a transaction is executed. It is equally true, however, that many clients may place a high priority on receiving an execution as soon as possible, and may be willing to receive a somewhat "lower" price on a sale to achieve that objective. A regulatory bias towards a "better" price at the expense of other reasonable investor concerns does not seem appropriate.

Second, and more importantly, the MSRB's belief may not at all be relevant to the analysis of the Proposed Rule, because slowing down *the process* of trading in the Market, which many aspects of the Proposed Rule will do, will not just slow down individual trading, but likely will lead to less trading in the aggregate of these securities, as: each trade likely will take longer (for the MSBB to follow mandated steps in a bid-wanted that may not be necessary, and then to analyze the resulting price to determine its fairness and reasonableness); certain trades will be further delayed (due to the notice and written acknowledgement requirements); and, lastly, some trades will not be executed because the dealer could not overcome the MSBB's inability to determine that the high price from a bid-wanted was fair and reasonable, given the time and resources it can devote to an individual trade. Unless it is assumed that both MSBBs and Retail Dealers have unlimited resources to devote to trading these securities, it seems that the potential for impeding liquidity as a result of this proposal is significant, especially in the case of retail-size orders and transactions in thinly-traded securities. We do not agree with the MSRB's statement in the Notice that this is an "exaggerated" concern, but we do agree that it would be a "perilous" result.[6]

Other Proposed Rule Provisions

Rule G-43(c) of the Proposed Rule sets forth the *mandatory* requirements for conduct of bid-wanteds that must be followed if the bid-wanted is to satisfy an MSBB's duty in Section (a)(1) to make a "reasonable effort" to obtain a price that is fair and reasonable.[7] In effect, these requirements would apply to all bid-wanteds. We believe that the aspects of Section (c) that relate to conduct that has been deemed to be violative of G-17 in the past should continue to be treated as such, and the aspects that mandate specific steps be taken in a bid-wanted should be treated as guidance from the MSRB for MSBBs to consider, but should not be mandated by rule for every bid-wanted. We also again stress our belief that the

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6 Notice, p. 6.

7 Proposed Rule G-43(b).

Retail Dealers' ability to control bid-wanteds should be reflected in any guidance on this point.

We also note that certain provisions of Rule G-43(d) are directly duplicative of existing MSRB rules that are applicable to all MSRB members. For example, the prohibition in section (d)(i)(I) against MSBBs disclosing "confidential, non-public information about the ownership of municipal securities to any person" is already explicitly covered by existing Rule G-24. In addition, other provisions of Rule G-43(d) appear to lack sufficient rational basis. For example, the rationale for the requirement in section (d)(i)(J) that MSBBs disclose to their Retail Dealer counter-parties whether they have customers is not sufficiently explained in the Notice.

Request for Comment Regarding Electronic Trading Systems

We believe that the MSRB's request for comment regarding electronic trading systems is anti-competitive. The MSRB's specific requests in this regard relate to how much more permissive the rules for electronic trading systems should be regarding dual agency and erroneous bids.[8] While it is only "requesting comment," the MSRB is clearly indicating its belief that the rules regarding electronic trading systems should be more lax, and that the only real issue is to what extent. We believe that requesting such comment in the context of a rule proposal imposing significant new burdens on traditional MSBBs is inconsistent with the important concept of a regulatory "level playing field" for all Market participants. For these reasons we believe that the there should be no distinctions made in the application of the Proposed Rule, should one be adopted, to any entity that meets the definition of MSBB without regard to the ownership of that entity, or whether that entity is a traditional MSBB, an electronic trading system, or a hybrid of the two.

[8] Notice, p. 9.

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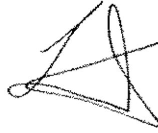
We wish to thank the MSRB and its staff for their work in developing the Proposed Rule and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposed Rule. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Respectfully,



Leslie M. Norwood
Managing Director and
Associate General Counsel

ATTACHMENT

November 15, 2010

Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2010-35: Request for Comment on MSRB Guidance on Municipal Securities Broker's Brokers

Dear Ms. Henry:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2010-35[2] (the "Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB requests comments on draft interpretive guidance on municipal securities broker's brokers ("MSBBs").

SIFMA supports effective and efficient regulation of the municipal securities markets that helps to aid market liquidity in a manner consistent with customer protection. As described more fully below, we are supportive of certain aspects of the proposed guidance ("Proposed Guidance"), but believe that, in important respects, the Proposed Guidance is inconsistent with the limited activities in which MSBBs engage, and may limit the effectiveness of MSBBs in carrying out the important role they play in the municipal securities secondary markets. We believe the adoption of the Proposed Guidance would impede the efficiency of the municipal securities interdealer market, to the ultimate detriment of investors in municipal securities. Lastly, we do not support the Proposed Guidance regarding Rule G-18, which imposes requirements on MSBBs that are not imposed by the rule as currently in effect. As described more fully below, we believe that the

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[2] MSRB Notice 2010-35 (Sept. 9, 2010).

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proposed additional requirements are inconsistent with the role of MSBBs, and also constitute an amendment to the rule which should be addressed in a separate rulemaking. Accordingly, SIFMA requests that the MSRB (1) withdraw the Proposed Guidance regarding Rule G-18 to the extent it imposes obligations on MSBBs in excess of what the rule requires, and (2) modify other aspects of the Proposed Guidance as requested below.

Role of MSBBs in Municipal Securities Secondary Market

MSBBs play a very important role in the workings of the secondary municipal market. Few markets for new issues of securities can function efficiently or well without the support of a secondary market where securities can be traded after they are first sold in the primary market. In addition to supporting the primary market, a thriving secondary market also serves investors by providing them with an array of securities to suit their investment needs, as well as providing an environment to buy and sell their securities quickly when necessary. MSBBs provide liquidity to the secondary bond market, extended distribution networks, information flow, and anonymity to market participants.[3]

Moreover, as MSBBs do not inventory securities, they are never in competition with their counterparties. Rather, the role of an MSBB is to act as an intermediary representing the counterparty's trading desk. MSBBs do not employ research analysts or provide research services. Lacking the pressure of maintaining the profitability of their own proprietary accounts, their role is fundamental: provide superior market execution with competitive market pricing, information flow and enhanced services to assist secondary market counterparties achieve success within the marketplace.

MSBBs facilitate and effect transactions through: new issue trading, bid-wanted trading, situation trading, swap trading, and by providing greater information flow or "color" on securities and the market in general. When secondary market participants cannot or do not wish to obtain bids directly for bonds they want to sell, they ask one or more MSBBs to obtain bids from trading desks across the country. When the bid-wanted auction item is given to an MSBB, bids are elicited via a blind auction process. In a bid-wanted, the MSBBs never know what the "sell at" price is before the end of the auction when the seller decides whether or not to accept the highest bid.

MSBBs advertise their bid-wanted items electronically (through Bloomberg, proprietary online trading platforms, proprietary websites, electronic-mail dissemination applications, fax dissemination applications, vendors, etc.) and over the phone by making direct contact with

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3 "Certain markets. . .are. . .informally organized around interdealer brokers, which display the bids and offers of other dealers anonymously. . .[I]nterdealer brokers provide liquidity by providing a central mechanism to display the bids and offers of multiple dealers and by allowing dealers. . . to trade large volumes of securities anonymously and efficiently based on those bids and offers." Securities and Exchange Commission, "Regulation of Exchanges," Release No. 34-38672, File No. S7-16-97 at 40 (May 23, 1997) [hereinafter Regulation of Exchanges] (citations omitted).

municipal bond trading desks nationwide. MSBBs solicit bids from interested parties, asking for bids to be received by a certain time during the trading day. All auction parameters are determined by the selling party and the MSBB is bound by those parameters in their intermediary (agency) role.

Established and reputable MSBBs maintain full trading history on all items; bid-wanted items (full description of all bid-wanted items), bid pads (programs containing the history of all firms that bid the item and the levels they bid, as well as PASS history, i.e., all firms that passed on bidding the item), execution history and ticketing/operational history.

When an MSBB acts as middleman, traders for selling and buying firms do not communicate with each other directly; all communications are with and through the MSBB. An MSBB acts as a confidential agent on behalf of a counterparty in the sale or purchase of bonds in order to prevent competing firms from discerning each other's trading strategies. The MSBB collates the bids and reports the best one to the potential seller, who may decide to sell them if the price is acceptable; MSBBs do not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed or determine the timing of a trade. An MSBB effects a trade between market participants by contemporaneously selling to the buyer and buying from the seller as a disclosed agent; all MSBB trades are equally matched transactions. All decisions are made by the seller or the buyer and the MSBB facilitates the trade. Only if the trade is done does the MSBB earn a commission.

After a municipal bid-wanted trade is executed, an MSBB provides the purchasing counterparty with information about the total number of bids received and about the cover bid, which is the next best bid after the level at which the bond traded. This is important information for dealers to have in assessing the depth of the market and the risk involved in bidding or offering bonds at particular levels. This information also permits trading desks to quote markets with greater certainty and, presumably, at lower spreads, increasing secondary market liquidity and the ability for investors to sell their bonds. With the information flow and access to the MSBBs' extended distribution network, trading desks can spend less time soliciting interest in bonds they want to buy or sell (with its potential negative market effect) and more time executing trades for their proprietary accounts or their customers. For traders, the timesaving element of working with MSBBs may make the difference between executing or missing a trade as well as obtaining a timely interdealer market price on their securities.

The advantage that MSBBs have in the market is their continuous communication with the dealer community or "Street." The MSBB has a "picture" of who owns what and tracks closely who is inclined to buy, as well as who might want to sell into the market on any given day. The anonymity MSBBs provide to their counterparties makes them more willing to give MSBBs information. Buyers and sellers look to them for information on the tone and direction of the market, and it is the MSBB's job to sense that tone and direction and be able to communicate it to their clients.

MSBBs often acquire knowledge of the various sectors of the municipal bond market, knowledge that individual dealers/banks may not have developed. It takes a considerable amount of effort, expense, and determination for an MSBB to acquire sufficient knowledge of any local market,

such as that of the Midwest region, for example. An MSBB with great strength and knowledge of their region and specialty types of bonds, contributes greatly to the efficiency of the associated markets, thus helping to lower interest rate costs to both local investors and local issuing communities. Brokering is much more than quoting rates, it is a complex and highly professional business that ultimately provides efficiencies to the overall market and all market participants.

Definition of Municipal Securities Broker's Broker

The Notice defines an MSBB as a "broker, dealer, or municipal securities dealer that principally effects transactions for other brokers, dealers, or municipal securities dealers ("dealers") or holds itself out as a broker's broker." SIFMA believes that this definition does not sufficiently define what an MSBB is, or the limited nature of their business activities. SIFMA feels strongly that that the MSRB needs to adopt a concrete, accurate and complete definition of an MSBB, and proposes an alternative definition directly below. Further, SIFMA is unclear as to the purpose of the clause "or holds itself out as a broker's broker" and requests that this phrase be omitted from any final definition.[4]

SIFMA believes that MSBBs should be defined by the nature of the business that they conduct. In light of this, we offer the following definition:

> The term Municipal Securities Broker's Broker shall mean a broker, dealer or municipal securities dealer that:
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> a) acts as a disclosed agent or riskless principal in the purchase or sale of municipal securities for an undisclosed registered broker, dealer, municipal securities dealer, Sophisticated Municipal Market Professionals ("SMMP"), or institutional counterparty;
> b) does not have or maintain any municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;
> c) executes equally matched transactions contemporaneously;
> d) does not carry any customer accounts; does not at any time receive or hold customer funds or safekeep customer securities;
> e) does not participate in syndicates;
> f) acts in the limited agency capacity of providing liquidity, market information, order matching, and anonymity through the facilitation of transactions in the interdealer market;
> g) does not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed, or determine the timing of execution; and
> h) is compensated by a commission, not a mark-up.

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[4] We note that although the Notice offers the quoted definition "for the purposes of [the] [N]otice," SIFMA is concerned that this definition will become a de facto MSRB definition. This is why we have offered what we believe to be a more accurate and complete definition.

SIFMA believes that a function-based definition of MSBB is necessary to ensure that the Proposed Guidance, if adopted, is appropriately tailored to the uniquely limited nature of MSBB activities. As the proposed definition clearly indicates, MSBBs, whether they process a transaction as "agent" or "riskless principal," do not exercise any decision making authority in connection with transactions they effect. MSBBs act as limited agents, generally for the sellers of municipal securities, for the purposes of soliciting bids on those securities ("bid-wanteds") or for facilitating the execution of transactions for buyers or sellers ("situations" or "offerings"). MSBBs do not have authority to take any other action on behalf their clients. As described above, bid information is relayed back to the seller, so the seller can determine whether to trade the securities in question. If the seller should determine that it wants to sell the securities, the seller will inform the MSBB that the bonds are "for sale," and *only at that time* will the MSBB contact the high bidder to effect the transaction.

SIFMA believes that only by adopting a definition of MSBB along the lines of the one above can the Proposed Guidance be properly analyzed. With this definition in mind, SIFMA offers the following comments on the Proposed Guidance.

<u>Agent versus Principal</u>

The Proposed Guidance seeks to establish a bright line distinction between when an MSBB trades as an agent versus principal: if the securities transacted are held even momentarily by the MSBB, even if only in a "clearing or similar account," the transaction is deemed to be a principal transaction. Further, the Proposed Guidance states that this determination is applicable "for all MSRB rules, not just the uniform practice rules." Although SIFMA appreciates that this aspect of the Proposed Guidance is intended to clarify the MSRB's view of the nature of MSBBs' trading activities, we believe that it elevates form over substance, and that MSRB should continue its long-standing practice, as reflected in current Rule G-18, of considering the MSBB's special relationship with its trading counterparties, and the limited agency capacity in which it serves those counterparties, when applying its rules.

We note in this regard that even if the bright line approach to this issue is adopted, the vast majority of MSBBs transactions are *not* taken into any account of an MSBB. These transactions are effected on a continuous net settlement basis through the National Securities Clearing Corporation Continuous Net Settlement System (the "CNS System"), where the transactions are matched between seller and buyer, and the commission to the MSBB is netted out during the settlement process.[5] In addition, most MSBBs operate as fully-disclosed introducing broker-

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[5] These transactions are reported as "principal transactions" in the Real-Time Reporting of Municipal Securities system, because they are inter-dealer transactions, and the system when implemented did not include this functionality. *See* MSRB Notice 2003-03, "Plans for MSRB's Real-Time Transaction Reporting System," (Feb. 3, 2003). *See also*, "Municipal Securities Rulemaking Board, Specifications for Real-Time Reporting of Municipal Securities Transactions," at § 1.31 (ver. 1.1 Sept. 2003) (current ver. 2.2 Nov. 2009, includes similar limitations in functionality).

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dealers, and all transactions are cleared through the accounts of the clearing broker-dealer. No MSBB transactions appear to meet the definition of principal trade under MSRB Rules.[6] It may appear, however, that MSRB transactions could be defined as riskless principal transactions under MSRB rules.[7] We also note that the MSRB definition of "as agent" trades requires that the transactions are not processed through the account of the dealer, are charged a commission instead of a mark-up, and that the dealer disclose, or be willing to disclose, the identity of the other side of the transaction.[8] Anonymity, however, is one of the primary services that MSBBs provide to their trading counterparties, and is an important service to the market.[9] We believe that if an MSBB can maintain anonymity of seller and buyer without taking a security into its accounts, the transaction should be viewed as an agency transaction, in accordance with the special relationship it has with its trading counterparties.

MSBBs conduct their securities business in a manner that is consistent with an "agency" business under the traditional meaning of the term, without regard to how they process their transactions.[10] As described above, MSBBs act as *limited* agents on behalf of their trading counterparties, solely for the purpose of seeking bidders for the securities owned by their trading counterparties, and seeking executions of securities transactions on behalf of those counterparties. The Notice reflects this agency relationship by noting that MSBBs may have a "special relationship" with their dealer counterparties, which may create "agency or fiduciary obligations" from the MSBB to its dealer counterparty. However, unlike traditional agents, MSBBs' authority to act for their dealer counterparties is extremely limited. For example, the bid-wanted process is subject to the

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6 Principal Trade: A securities transaction in which the broker-dealer effects the transaction for its proprietary account. MSRB Glossary of Municipal Securities Terms, Second Edition (January 2004).

7 Riskless Principal Transaction: A transaction in which a broker-dealer, after having received an order to buy a security, purchases the security as principal to satisfy the order to buy or, after having received an order to sell, sells the security as principal to satisfy the order to sell. *Id.*

8 "As Agent" Trade: A securities transaction executed by a broker-dealer on behalf of and under the instruction of another party. The broker-dealer does not act in a principal capacity and may be compensated by a commission or fee (which must be disclosed to the party for whom it is acting) rather than by a mark-up. To function as a customer's agent, a broker-dealer must disclose or express willingness to disclose the identity of the other side of the transaction. *Id.*

9 "Trades are executed by the blind broker on an anonymous basis—i.e., without the disclosure to either dealer of the identity of the contra party at the time of the trade. . .[S]uch systems are designed to facilitate the execution of orders". Securities and Exchange Commission, "Proprietary Trading Systems," Release No. 34-26708, File No. S7-13-89 at 8 (April 11, 1989).

10 Agency: "Agency is the fiduciary relationship that arises when one person (a "principal") manifest assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." "Restatement (Third) of Agency," at §1.01 (2010). Agents operating under this standard have traditionally had the authority to legally bind their principals, which MSBBs do not.

control of the seller. Sellers may direct that certain potential bidders not be contacted, or that only certain bidders may be contacted. Sellers also determine the time parameters of any bid-wanteds. Lastly, MSBBs do not have the authority to effect transactions for their clients at any price they find. Rather, they must return to the seller, and the seller makes the decision to sell, at which time the MSBB effects the transaction.

The only aspect of an MSBB's business that the MSRB has identified as resembling traditional principal transactions is the processing of those transactions which are actually settled through the clearing or other account of the MSBB, but we believe this distinction elevates form over substance. In all other respects, MSBBs act in the limited agency role described above. They do not maintain an inventory of securities for trading purposes and they do not determine whether a transaction will occur, or the price or time of any transaction. Nor can they profit themselves by marking-up a transaction with a counterparty. We believe that it is these conflicts of interest that underlie the principal trading rules.

For the reasons described above, MSBBs have traditionally treated their transactions for all purposes as agency transactions. In March 2001 MSRB stated its position that MSBB transactions should be treated as riskless principal transactions for its Uniform Practice Rules.[11] Subsequent to this, when the MSRB implemented its Real-Time Transaction Reporting System, the system did not allow for the reporting of interdealer transactions as being done by agent.[12] We believe that the way to remedy this issue is to modify the trade reporting systems to allow the reporting of inter-dealer transactions effected on an agency basis.

Based upon the foregoing, SIFMA believes that MSRB should continue its practice, as reflected in the current text of Rule G-18, of applying its General Rules to MSBBs in a manner reflective of the limited nature of MSBBs' business, and not proceeding from a mechanical application of those rules based on the manner in which transactions are processed.

Rule G-18

The Proposed Guidance regarding Rule G-18 not only provides additional guidance to help MSBBs in meeting their obligations under Rule G-18, but also substantially modifies the current rule. SIFMA generally supports the additional guidance, but does not support the expansion of Rule G-18 beyond its terms, and further believes that if the MSRB wishes to so expand Rule G-18 it should do so through the normal rule amendment process, with due consideration given to amending the rule not only as it relates to MSBBs, but to all MSRB members.

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11 MSRB Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems (Mar. 26, 2001).

12 Municipal Securities Rulemaking Board, Specifications for Real-Time Reporting of Municipal Securities Transactions, *supra* note 5.

SIFMA supports the Proposed Guidance regarding the steps that may need to be taken in certain circumstances to ensure that the bid-wanted *process* is fair and reasonable. MSBBs currently undertake additional steps when they believe them to be warranted to ensure that they operate a fair bid-wanted process. These steps include seeking to contact the underwriter of an issue and/or prior known bidders on the issue, and similar measures to ensure that bid-wanteds are not only widely disseminated, but also exposed to likely interested parties. However, as currently drafted, the Proposed Guidance speaks in terms of what the MSBB "must" do to ensure a fair and reasonable process is conducted. As noted above, the entire bid gathering process is subject to the control of the seller, and the MSBB is bound to follow the seller's direction so long as such directions are not in contravention of any applicable rules. For this reason, we request that the Proposed Guidance be revised to make clear that these steps are not mandatory, but are suggestions for how an MSBB can meet its obligations.

SIFMA does not support the use of the Proposed Guidance to substantially amend Rule G-18. Rule G-18 currently requires that, in connection with their transactions for their dealer clients, MSBBs shall be under the same obligation to their dealer counterparties as are dealers when they conduct agency transactions with their customers, which is to "make *a reasonable effort* to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions." Rule G-18, by its terms, is a process-based rule, not an outcome-based rule. The Proposed Guidance modifies Rule G-18 to require that MSBBs, and only MSBBs, make a determination after the bid process has run its course as to whether the resulting highest bid is fair. In addition, if the MSBB is unable to determine that the price is fair, the MSBB would be required to notify its dealer-client in writing of that fact, and would also be required to receive written acknowledgement of this fact prior to effecting the transaction. Rule G-18 does not, and if it were to be amended by the Proposed Guidance as proposed, would continue to not require these actions be taken by dealers when acting with customers (including retail customers) in an agency capacity.

We believe that this proposal inappropriately places the primary burden of determining whether a transaction should occur on the MSBB, rather than on the sellers of securities. The MSBB's role in these transactions is to seek to provide their trading counterparties with information about the market for the securities in question at the time in question. The determination of whether a resulting high bid is fair, especially in a market as thinly traded as the municipal securities secondary market, [13] is inherently subjective, and is one which the seller is clearly in a better position to make, and which the MSRB requires that dealers make when acting as principal for their customers.[14]

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[13] *See* SEC Report on Transactions in Municipal Securities (July 1, 2004), available at: http://www.sec.gov/news/studies/munireport2004.pdf. The report found that during the study period, about 70% of municipal securities did not trade, and less than 1% of securities accounted for half of the transaction activity.

[14] *See* Regulation of Exchanges, *supra* note 3.

When dealers consider whether to trade a bond at a given price, dealers are focused on the market risk involved in establishing or terminating positions, as well as suitability concerns when dealing with customer transactions. The relevant factors for determining prevailing market price are not the same for every trade. For instance, dealers receive a variety of bid and offer information throughout the trading day, including information from interdealer brokers, dealer contacts, their internal research, market or credit analysts, and customers for securities. Dealers may receive this information orally or electronically (e.g., via facsimile, Bloomberg or other electronic messaging systems, or website access). Dealers view this quotation information as critical in assessing the current market price for a bond because it reveals the demand and supply for a particular security or type of security, which – according to basic economic principles – determines price. In some instances, this information may be more important than prior trades.

In addition, there are a myriad of reasons why prevailing market prices may deviate due to unquantifiable market forces. For example, on Day A, a dealer may get 5 bids on a bid wanted listing, with a high bid of 103.5 and a low bid of 101. On Day A, the bid side is established to be 103.5. The next day, Day B, no major market shift may have occurred, but the top two bidders for that type of security do not bid. The top two bidders may not have bid for any number of reasons, including they do not want to risk their capital that day, their portfolios are full with that name or type of credit, or their portfolios are full for that point in the yield curve. The bid side on Day B becomes 101. Liquidity ebbs and flows in the market, and is not constant. Liquidity for a particular securities issuance typically becomes thinner the older it gets. Liquidity for transactions that have recently been issued is fairly high, with a steep drop in liquidity as the issue matures.[15]

Another factor that determines market liquidity on a particular day is the level of supply of bonds. There have been a number of recent examples of leveraged counterparties needing to sell large amounts of bonds in the wake of collateral calls. In this scenario, it is not the securities that are distressed, but it is the seller that is distressed. In a market where supply greatly surpasses demand, the prevailing market price for securities will decrease until the level at which market participants are willing to commit investable capital.

We also note that dealers will often have as good or better a view of the day to day market variations described above than will an MSBB. Given that dealers have multiple sources of information, and typically employ a variety of research, market and credit analysts who are available to their traders, there is no reason to think that, as a general matter, an MSBB is in a better position than is the dealer to make a determination regarding fair market value. As stated above, dealers employ a variety of securities analysts, while MSBBs do not employ research, market, credit or other analysts. In the MSBB's role as auctioneer, the broker-dealer community does not look to MSBBs to provide those services. *In addition, the MSBB will never have any information regarding the dealer's client or the client's motivation for selling a security.* Given these facts, we believe that the dealer should be allowed to make its decision to buy or sell in a particular transaction based on the dealer's analysis of the information available.

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[15] *See* MSRB 2009 Factbook at 16 (2009).

We also believe that the proposed notice and acknowledgement scheme proposed for when an MSBB is unable to make a fair market value determination is unworkable. Given the fast paced nature of most bond trading desks, it is difficult (if not impossible) to imagine an MSBB and a dealer actually going through the steps of giving notice of the MSBB's inability to determine whether fair value has been achieved, and obtaining written acknowledgement of that disclosure outlined in the Proposed Guidance, *before the transaction is executed.* Given all of the market variations described above, and the extensive information and other resources that dealers have available to them, this market impediment seems unjustified, and potentially harmful.

SIFMA is concerned that the secondary market for municipal securities could be harmed because dealers may be discouraged from committing capital to the municipal securities secondary market, especially to lower-rated securities, retail-sized blocks and any security in a volatile market. Dealers will be less willing to buy securities for their own inventory or otherwise engage in trades that are not crossed internally due to the amount and timing of documentation for compliance purposes that may be required for each transaction. This impact will be heightened if, given all the market variations described above, MSBBs feel compelled to provide notice that they have not been able to make a fair market value determination. This risk is further heightened if dealers do not agree with the MSBB's conclusion that the bid offered cannot be concluded to be fair market value. Given how thinly traded the vast majority of municipal securities are, we believe that these potential risks greatly outweigh whatever the supposed benefit of this part the Proposed Guidance is intended to provide.

Should MSRB continue to pursue this aspect of the Proposed Guidance, SIFMA believes that it should be addressed in a separate rulemaking, and that additional information be provided to explain how these new requirements are intended to work in practice. For example, would an MSBB's dealer-client be free to trade a security with a customer based on a price that the MSBB was unable to determine was fair? If so, would the dealer be required to notify its customer in writing of the MSBB's inability to conclude that the price is fair and reasonable, and to obtain an acknowledgement from the customer? If the dealer-client cannot effect the trade with its customer, isn't the MSBB being forced to take on the dealer's client-protection responsibilities, without any information about the client? Lastly, what avenue would remain available for distressed sellers looking to liquidate municipal securities positions? Would they be barred from the market based on the MSBB's inability to make a fair price determination? We believe that issues such as these support the conclusion that Rule G-18 should not be amended in this manner, and that if such an amendment is to be considered, it should be vetted through the normal rulemaking process.

Transactions with Customers

The Proposed Guidance regarding transactions with customers does not appropriately reflect the limited and sophisticated nature of MSBBs' non-dealer counterparties. As indicated in the proposed definition of MSBB above, MSBBs effect transactions only with SMMPs and institutional investors. Given the sophisticated nature of these counterparties, SIFMA does not believe that subjecting these transactions to Rule G-30, and therefore prohibiting these counterparties from trading as they choose, is warranted.

SIFMA believes that MSBB's transactions with SMMPs should continue to be governed by the SMMP Notice published by MSRB in 2002.[16] In the SMMP Notice, the MSRB stated that for dealers in general, that if a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.

Based on the foregoing, any transaction between an SMMP and an MSBB that is effected without the securities being held in the MSBB's account, such as through the CNS System or by fully disclosed introducing MSBBs, would appear to be within the bounds of the SMMP Notice, and not subject to a transaction by transaction analysis under Rule G-30. Further, given the fact that an MSBB is only compensated by a commission on its transactions, and cannot benefit itself by marking-up securities, we believe that SMMPs should be allowed to decide whether it wants to trade with an MSBB even when the transaction is processed through a clearance and settlement account of the MSBB, so long as it is disclosed to the SMMP that the MSBB may process transactions either as riskless principal or agent. We believe that SMMPs should be allowed to continue to trade their securities as they see fit, and not be precluded access to the market in the manner they so choose.

SIFMA also believes that the definition of SMMP should be reviewed, to determine whether additional institutional investors should be accorded the same status as SMMPs. As we discussed in our June 7, 2010 letter to Ernesto Lanza commenting on MSRB Notice 2010-10, we believe the qualifications for institutional investors to be considered SMMPs should be modified. In the context of suitability interpretations, it is widely recognized that institutional and retail investors are qualitatively different,[17] and the threshold for determining an SMMP is very stringent. First, an SMMP must be an entity with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management. When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion, the institutional customer can be considered SMMP by the dealer.

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[16] Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002) (the "SMMP Notice").

[17] *Id.*

SIFMA feels a lower threshold is appropriate to establish that an institutional investor is an SMMP.[18] Many institutional accounts do, in fact, have the ability not only to assess the intrinsic value of particular debt securities, but also to evaluate independently the market for them. Certain institutional accounts that are active in the debt securities markets employ considerable in-house expertise evaluating potential investments — expertise that at times may be superior to those of bond dealers. These institutional customers include the asset management arms of virtually every multi-service financial services firm, large insurance companies, and hedge funds specializing in a wide range of liquid and illiquid municipal securities. These institutional customers also typically have sales and trading relationships across several investment banks, regularly possess internal research departments with specialized knowledge of the industry sectors in which they invest, direct contact with issuers and obligors, and have access to their own capital in addition to the capital in the dealer market. They also have access to information from multiple dealers as well as trading screens on which they may do comparative requests for quotations among their dealers.

Based on the foregoing, we believe that many institutional investors that do not meet the definition of SMMP should be accorded greater trading flexibility than would be afforded a retail investor whether by amending the SMMP standards or by recognizing that many institutional investors that do not meet the SMMP standards are still very sophisticated. In this connection, SIFMA suggests that a notice and acknowledgement scheme such as proposed for Rule G-18 transactions might be appropriate in this case. We believe that implementing such a scheme here, as opposed to under Rule G-18 for MSBB-dealer transactions, would appropriately balance an institutional investor's need for protection with its right to access the markets on terms that it deems appropriate, once they have been put on notice by the MSBB regarding its inability to determine whether a potential trade price is fair and reasonable.

Rule G-17

SIFMA agrees with the Proposed Guidance's statement that, like all other municipal securities dealers, Rule G-17 applies to MSBBs, and that all dealers have an obligation not to act in "any unfair, deceptive or dishonest manner" in the conduct of their securities business. Below we discuss each point of the Proposed Guidance as it relates to Rule G-17.

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[18] We note, for example, that Section 2(a)(51) of the Investment Company Act of 1940 defines a "qualified purchaser" to have an investment portfolio of at least $5 million for an individual or at least $25 million for a corporation, partnership or other entity.

MSBBs and Non-Dealer Counterparties

The Proposed Guidance states that MSBBs that have customers (which we understand to mean non-dealer counterparties that are institutional investors or SMMPs), must disclose this fact to both sellers and bidders in writing. While SIFMA agrees with this in principle, we believe that it is important to make clear that this requirement can be met in a variety of ways, such as at the time a dealer or non-dealer counterparty relationship is initiated, through website disclosure, or through a written communication to all counterparties that may include other important information, and that MSBBs should be free to choose to make this disclosure in whatever mode is suitable for their business.

The Proposed Guidance also states that MSBBs that have non-dealer counterparties must also put information barriers in place to ensure that they "are not provided with information about securities of other clients, including the ownership of such securities and information about bids (other than the winning bid that is reported to the MSRB)." While SIFMA agrees that counterparty-specific identification information should not be shared with other counterparties, this provision also appears to prohibit any market-related communication from an MSBB to a counterparty.

SIFMA is especially concerned that a broad restriction on MSBBs sharing market related information with counterparties may lead to a bifurcation of the municipal securities secondary market, as it relates to counterparties dealing through MSBBs versus other dealers. SIFMA strongly believes that the standards on communications should be the same for both MSBBs and dealers, and that the guiding principle should be that all market participants should have access to information needed to allow them to make informed decisions, thereby promoting full access, transparency and fair play in secondary markets.[19]

For example, we do not believe that an MSBB or a dealer should ever provide to a trading counterparty information about what another market participant is doing, if the sharing of such information would allow the trading counterparty to ascertain the identity of the other market participant or its proprietary trading information.[20] However, we do believe that sharing information about what similar securities have recently traded for, or may be currently bid at, is useful information that can allow the counterparty to make informed buy/sell decisions.

If the intended purpose of this provision is to prohibit all market communications, it is unclear to us how such a prohibition aids the operation of a fair and transparent market, or could be fair to market participants. Further, this prohibition appears to put customers of dealers in a superior position to counterparties of MSBBs, which also seems contrary to the goal of fair treatment of

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19 "Market transparency and access to information is fundamental to a fair and efficient market." "The MSRB Protecting Investors and the Public Interest," available at: http://msrb.org/Publications/~/media/Files/MISC/TheMSRBProtectingInvestorsandthePublicInterest.ashx.

20 We believe such a standard is consistent with MSRB Rule G-24.

all market participants. Lastly, SIFMA is concerned that such disparate treatment of counterparties based on their status is contrary to the principles of Rule G-17.

Self-Dealing

SIFMA agrees with the Proposed Guidance's position that sharing of non-public information (including information about bids) between a non-MSBB affiliate (or corporate division, if the MSBB is part of a larger corporate entity) and an MSBB that is purchasing securities for the MSBB's own account (as opposed to the account of the highest bidder) constitutes self-dealing, without regard to whether the trade is done directly, or by interpositioning another dealer in the process. SIFMA further believes that an MSBB should *never* trade securities for its own account, and our proposed definition above incorporates this prohibition. A broker's broker that trades for its own account is not, in our view, an MSBB. We believe that not including such a prohibition in the definition can only lead to confusion about the appropriate roles of MSBBs.

Bid-Wanteds and Situations

SIFMA agrees with the general principle stated in the Proposed Guidance that bid-wanteds and situations must be conducted in a fair manner, and that absent clients' permission to represent both sides of a transaction, they must not take any action that works against a client's interest. However, we are concerned that the specific prohibitions on communications to bidders are overbroad, and would impede the conduct of efficient processes to the ultimate detriment of all market participants, as described below.

We believe that communications during bid-wanteds and situations should continue to be judged on a case-by-case basis, and not by attempting to prohibit various types of communications. The MSBB should be free to manage the process to avoid, for example, the acceptance of clearly erroneous bids, as this appears to be required under Rule G-13.[21] MSBBs would know that in exercising this judgment as to when to intervene in a bid process they will be judged under Rule G-17.

We also believe the proposed prohibition against letting bidders know where they stand in the bid process is unnecessarily restrictive. Bidders routinely seek information after the "sharp" deadline for bids on whether their bid is likely to be used in a specific bid-wanted, so that they can determine whether the capital represented by their bid is likely to be used for that transaction. This is a long-standing industry practice expected by the broker-dealer community. If, after the sharp deadline, a bidder is clearly out of contention for a bid-wanted, that firm may decide to participate in another bid-wanted to continue to try to put their capital to work. These types of

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[21] Notice of Interpretation of Rule G-13 on Published Quotations (April 21, 1988), *reprinted in* MSRB Rule Book, available at http://www.msrb.org/msrb1/rulesmotg13.htm. SIFMA also notes that if MSBBs are unable to intervene in cases of obviously erroneous bids, incorrect information about market value of securities would be reported and disclosed to EMMA, and ultimately could result in customers paying in excess of fair market value. In these situations, FINRA arbitration is almost a certainty.

communication appear to generally benefit all market participants, and foster efficient capital deployment. We note that it is a generally accepted practice that once a bidder receives information consistent with that described directly above, the bidder may not change its bid.

SIFMA is generally supportive of the prohibition against bidder-specific communications other than those described directly above, including communications related to the price offered by the bidder (directions to "review" the bid, or that it is "sticking out"), subject to the following limitations. First, MSBBs should be free to provide non-bid specific market information to bidders at any time, including during a bid-wanted process. Second, as mentioned above, MSBBs should be allowed to contact a bidder when, in the MSBB's judgment the bid submitted is clearly erroneous. Given the limited nature of these communications, we do not believe that there should be a requirement to notify all bidders to give them the opportunity to adjust their bids. We also are concerned that should a requirement to contact all bidders in a bid-wanted be imposed, this could lead to unintended consequences to the detriment of the auction process.

SIFMA believes that these communications issues may be better addressed by a disclosure to an MSBB's counterparties describing the MSBB's bids-wanted communication policies. Such a disclosure could include the MSBB's policies on all of the points discussed above, and any other points the MSBB deems relevant. Such a disclosure scheme could allow the MSBB's prospective counterparties to decide for themselves whether they wanted to conduct business with an MSBB given its communications policies. Lastly, we note that MSBB's communications during a bid-wanted process would still be subject to the general Rule G-17 standard stated in the Proposed Guidance.

Bid-Related Issues

SIFMA agrees with the Proposed Guidance that it is inconsistent with Rule G-17 to submit fake cover bids, to adjust a bid without the bidder's knowledge, to fail to inform the selling dealer of the highest bid, to accept bids after a sharp bid deadline, or to submit fictitious trade prices.

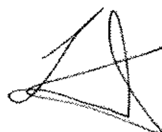
Recordkeeping/Record Retention

SIFMA agrees with the Proposed Guidance's provisions addressing Rules G-8 and G-9, requiring MSBBs to keep records of all bids (including "quick answer" bids), together with the time of receipt, for at least three years, and prohibiting records of bids from being overwritten (e.g., when new bids are entered).

* * *

We wish to thank the MSRB and its staff for their work in developing the Proposed Guidance and for this opportunity to comment on it. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the Proposed Guidance. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Respectfully,



Leslie M. Norwood
Managing Director and Associate
General Counsel

cc: Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Broker's Brokers Committee
Municipal Legal Advisory Committee
Municipal Syndicate and Trading Committee

Ronald W. Smith,
Corporate Secretary
MSRB
1900 Duke Street
Alexandria, VA 22314

Via E-mail to ComentLetters@msrb.org

Re: MSRB Notice 2011-18

Seidel & Shaw, LLC., in reference to discussion of Broker's Brokers as Agents in MSRB Notice 2011-18, wishes to comment as follows:

It appears the MSRB is considering institutionalizing a prejudice against voice brokerage in reference to the classification of Broker's Brokers. We question the legality and fairness of this prejudice in the context of creating and maintaining a fair and equitable marketplace for all participants. Granting an exception (Re: Advantage) to the electronic trading systems (Re: Large Brokerage firms) over firms utilizing voice brokerage (Re: Small Brokerage Firms) has the distinct appearance of favoritism. With the current market place losing liquidity anyway through the pain of the financial crisis of the last few years, having the regulators choosing winners and losers through special exemptions must negatively impact liquidity and we wonder **loudly** how this is good for the general public, let alone the legality of such one sided rulemaking. Further, to institute these types of rules in the municipal sector, considering the budgetary and political volatility of the times, would seem to be the height of irresponsibility.

Thomas W. Shaw
President

40 Exchange Place • New York, NY 10005
Phone: (212) 269-9008 • Fax: (212) 269-6070 • 1-888-661-8109

From: Joseph Lawless

Sent: Tuesday, April 12, 2011 3:29 PM

To: Comment Letters

Subject: MSRB Notice 2011-18

Sirs;

It looks like you have taken great strides to protect the consumer in municipal arena, and for that you have the thanks of us all. That said, not everything makes sense in the new draft rules, in their present form anyway.

With regard to erroneous bids, however, it's not prudent or practical to follow the rules you have laid out. For instance, if your bidder puts a price of $102 on item # 343, which are zero coupon bonds that trade at about $17(he meant to bid item #434), then any rational person SHOULD BE able to let the bidder know he made an error. To now go and get PERMISSION from the seller makes no sense. What if he(seller) denies it and wants $102 for the bonds? Are you to do that trade and alienate your buyer(and many others) forever? What of the ripple effects that print will cause for matching bonds in the street and further MSRB errors?

Also, say you do get permission. What good will telling everyone to check their bid or re-bid do? Let's say you have 6 bids on item #343 that are between$16.50 and $17.00. Why do they need to be told that someone bid this item in error and they should perhaps, re-bid. It was an error that shouldn't affect it, so why the extra time,effort and hassle?

I will probably have other thoughts for you to review but wanted to get this out to you. Please let me know your thoughts on this when time permits.

Many Thanks,

Joseph M. Lawless, President
Sentinel Brokers Company, Inc.
516-541-9100

From: Joseph Lawless
Sent: Wednesday, April 13, 2011 11:53 AM
To: Comment Letters
Subject: MSRB Notice 2011-18

Sirs:

Another of the points that you request comment on are: should the rules for electronic trading systems that qualify as broker's brokers be different from voice brokers. The answer is no, as it may put them at a competitive advantage by doing so, and may also damage the customer. If some of these proposed rule changes take effect, it will make the process much more labor intensive then it is, be it checking if it is okay with the seller to have a clearly erroneous bidder "checked", or to have all the existing "good" bids be re-bid (for whatever reason). It's not only more labor intensive for the broker, but for every dealer that has to now work on this bid wanted item (again) when it was already bid. As many dealers are very busy already, this double work would be a clear inconvenience, putting a traditional voice broker at a competitive disadvantage to one that does nothing. Not to be overlooked is the duty to be fair: If human error causes a dealer to bid par $100 electronically on a block of bonds worth $20, a single trade could put a firm out of business. Also, from the bottom line customer standpoint, it isn't right for the issue to be treated differently simply because it is done over an electronic platform vis-a-vis voice.

Indeed, because if 15 minute reporting, it is my understanding that electronic platforms follow up an electronic trade with a phone call making it, at least somewhat, a hybrid platform. Many current "voice" brokers accept bids electronically now, making them also somewhat of a hybrid platform. These electronically received bids are sometimes erroneous and would need to be addressed. If there were two sets of rules, where would such brokers fall?

As you can see, what is good for one, has to be good for all from the viewpoint of the broker, dealer, and customer. The MSRB has taken many steps to protect the retail consumer over the past several years and the industry applauds many of those efforts. What needs to be done now is not overstep so that rules are draconian, favor one type of broker over another, or put one customer at a disadvantage over another.

Thank you.

Joseph M. Lawless, President
Sentinel Brokers Company, Inc.
516-541-9100

From: JERRY RACASI, SEVEN POINTS CAPITAL
Sent: Wednesday, April 13, 2011 1:49 PM
To: Comment Letters
Subject: g-43

i have been in the industry since 1967,both as a broker's broker and as a municipa bond dealer. first,a broker's broker cannot be both a principal and a bb. the dealers on either side of a bb's potential trade are the only principals. focusing just on rule g-43(a)(iv),it cannot,for obvious reasons be the bb's responsibility to decide whether a price/bid is fair and reasonable.this must be the responsibility of the principals involved.the bb is merely paid a small commission to solicit competitive bids.they are not market traders like dealers.thus the suggestion to document is superfluos.
g-43 (c)(vi) dealers can't predict on an hourly basis where their capital is to be committed. thus it is perfectly sensible to ask the broker for a simple yes or no answer to the question,am i high? g-43(c)(vii) the onus to decide what is a good bid,bad bid,or a bid that is clearly out of line belongs to the iniating dealer. clearly if the recent market on a bond is in a range of 95-97 and the the bb has a bid of 107,common sense should prevail. thankyou,jerry racasi seven points capital

From: Jackson, Andy (Dallas)

Sent: Wednesday, April 20, 2011 8:48 AM

To: Comment Letters

Subject: Notice 2011-18

G-43(a)(iv)--Broker's Brokers should only be required to state that they obtained the best bid available that day and that they feel that the
bid-wanted was adequately and fairly shown to the entire market. They cannot be responsible for which traders are at work
that day and what they are willing to pay.

G-43(c)(iv)--No big problem with this if it is talking about no comment while the bid-wanted is active. Traders should be able find out where
they stood after the bid-wanted has concluded.

G-43(c)(vi)--With all of the time sensitive regulations that you've already burdened the market with, errors have increased. If I bid many items
and inadvertently hit "9" instead of "0" and enter a bid of $190 instead of $100 which is an obvious mistake then I could be held responsible
for a 90 point loss if the seller refuses to change the bid. In order to minimize the chances of this happening I can assure that I, along
with most other traders will bid MUCH LESS frequently and therefore DRAMATICALLY reduce liquidity in the municipal market. Beware
of "unintended consequences". Our business is not as dishonest as you're regulatory response seems to suggest. Go after the few offenders
individually rather than make the entire business an unprofitable, broken model because of over burdensome regulation.

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314-342-2000

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INCORPORATED
30 Wall Street, New York, N.Y. 10005
CALL : 1-800-223-3881
www.stoeverglass.com
MEMBER SIPC AND NASD

April 15, 2011

Re: Response to MSRB Notice 2011-18 – Requests for Comments on MSRB Guidance on Municipal Securities Broker's Brokers.

We are Bond Dealers; nonetheless we would like to voice the following concerns regarding the new rules you are proposing to impose on the Broker's Brokers.

G-43(c)(vi) We consider the rule that allows a market to be based on mistakes to be totally inappropriate. Based on that logic, if a mistake allows a bond to sell 10 points too high, that means that if the mistake is 10 points too low that should also be allowed.

Consider an instance where an MSRB Board Member has work done on his home that costs $1,500 but he inadvertently makes out the check for $15,000. Using your own logic he should be held to the $15,000 expense unless the contractor lets him off the hook.

G-43(a)(iv) In a free market, the high bid is the best price at the time. If the selling dealer doesn't realize that a bid is too low, he is incompetent. On the other hand, if he wishes to sell on a bid that appears too low, he might be doing so based on consideration of the direction of the market. We have no idea why you are putting the responsibility of evaluating bid levels on Broker's Brokers when it should not be their responsibility.

Requiring written instruction will be much too time consuming to be effective. It will reduce the overall number of bids and also the liquidity and depth of the market. Therefore, it will actually hurt the public you are trying to protect.

Every Broker's Broker would be negatively affected by this proposed rule and more importantly, the public will also be negatively impacted due to a much less efficient market.

On behalf of Stoever Glass & Co., Inc.

Frederick J. Stoever
President

April 21, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria VA 22314

Comments in Regard to Notice 2011-18

Dear Mr. Smith:

TheMuniCenter, L.L.C. ("TMC") is pleased to respond to the Municipal Securities Rulemaking Board ("MSRB") Notice 2011-18 "Request for Comment on Draft Rule G-43 and Associated Amendments to Rules G-8, G-9, and G-18". TMC appreciates the Board's efforts, since the original drafted rule, to meet with industry participants for crafting legislation that is appropriate given the significant changes in the market over the last decade. TMC is both a registered broker dealer and registered Alternative Trading System ("ATS"). While TMC does not present itself as a broker's broker, under the proposed definition TMC would be subject to the rule as it operates as neutral intermediary to bring counter-parties together electronically. Unfortunately, G-43's definition of a broker's broker unfairly categorizes electronic marketplaces as such and we support the Board's efforts to recognize the differences. Without the proposed ATS exemption or modification to the draft language, both the movement towards electronic trading and the regulatory support of exchange trading will be impaired. Furthermore, the adoption by many firms to place customer items out for competitive bidding as opposed to only internal bidding, will become both significantly less efficient and less transparent. Ultimately, this will result in higher transaction costs for all market participants.

Should a broker's broker be permitted to have non-broker dealer clients?
TMC supports allowing broker's brokers to have customers and agrees with the MSRB's ruling that a broker must disclose such a relationship as defined in G-43(d)(i)(J). As the markets have changed, certain broker's brokers have customer accounts and virtually all municipal ATS's

support customers as clients. While the MSRB is concerned about favorable treatment of customer accounts over dealers, the favoritism is not a natural state for a broker. In fact, a broker receives no more additional benefit from serving an institutional customer over a dealer. Dealer customer favoritism originates from such things as designations on orders and receipt of orders for new issues. Dealers compete against each other for these benefits, brokers cannot. A customer account can only offer a broker the same buying and selling opportunities that a comparable dealer can equally offer. To preclude industry participants from having such relationships would be anti-competitive and provide other venues with an unfair advantage. TMC believes that a fully transparent marketplace with a wide breadth of participants will create a more liquid marketplace for all parties. FINRA rules, such as the proposed 15c3-5, help regulate the behavior of customer's interaction with the debt ATS's and further support an efficient market.

TMC does not support the current language for Draft Rule G-43(d)(i)(H) requiring a broker to disseminate all pricing information equally, publically, or otherwise and to only post to the selling firm the bids and to the high bidder the cover. As stated above, a customer account has no natural advantage versus a dealer account and does not logically dictate special treatment. Broker's as a neutral intermediaries require both parties of a trade to be treated equally regardless of client type. Furthermore, the language to post publically and equally is not clear as to exactly who and what can be posted. Is the "public" posting only to the bidders that participated in an auction? Is to post to all participants "equally", suggesting that a bidder who missed the trade price by 10 points receive the same post as the participant who missed the trade by 10 cents? As an ATS, our system automatically and systematically posts bidders based on the performance of their bids. This process rewards competitive bidders over the bidders who are less engaged. Rewarding good bidders encourages better prices. With the MSRB price dissemination service, all participants are posted as to the trade level and the idea of disclosing that bids may or may not reflect market levels is superfluous to industry professionals. The details of the auction should selectively reward those firms who have taken the time to research and make an effort to bid market levels. TMC believes an ATS should be allowed to post different information to auction participants as long a systematic process is equally applied.

Dual Agency Electronic Trading Representation Draft Rule G-43(a)(iii)

With respect to Draft Rule G-43(a)(iii), TMC supports the exemption for registered ATS's to represent as agent both the buyer and seller when an unsolicited bids wanted is placed by the client firm. Under a voice process, a relationship is first created when the seller contacts a broker, who in turn, often plays a role in defining the characteristics of the auction such as the bid-by time, the firm time length, and the order in which client firms first learn of the bids wanted, etc. Under the electronic process, theses decisions are exclusively based on the will of the participant. Furthermore, under an electronic process, all participants are treated equally; that is, every user receives the same information at the same time. An electronic medium significantly reduces many of the abuses the MSRB is concerned of in the traditional broker's broker space. TMC believes that it has a responsibility to equally represent both the buyers and

sellers in order to insure a fair auction process. This belief extends electronically to providing both the buyer and seller with such information as price history, EMMA disclosures, analysis tools, and "reasonableness" checks to insure a healthy auction process. The MSRB correctly identifies that the vast majority of bids wanted submitted electronically are odd-lots. While the size of the trade does not necessarily dictate whether a voice or electronic medium is appropriate, it does emphasize the market's need to have electronic access for the large number of bids wanted that exist today. Many more firms are placing retail lists out for the bid, not for market discovery, but for providing clients with best execution. The self directed nature of an exchange environment and the incidence of human error that invariably occurs as a result of self directed actions should necessitate that both seller and buyer are represented by an ATS. Therefore, TMC supports the ATS exemption whereby the electronic process treats all markets participants equally.

Rule G -18 – ATS's/Brokers cannot use same level of care as a dealer to determine fair price
TMC believes that a broker's broker does not have the same resources, information, client facts and circumstances to determine fair value for the participating dealer. It is understood that the selling dealer still has to make independent decisions; however a false sense of security can be created by suggesting that a non-risk taking broker has the ability to provide guidance to determine fair value. The notion that a broker can determine fair value for a trader is no more accurate than suggesting that the pricing services can determine fair value for all participants. The very challenge of determining value and the expertise required is exemplified in most trading shops where the separation of trading and sales responsibilities is divided as to allow traders to focus solely on market valuations.

The MSRB incorrectly assumes that a well run auction will have many bids per item when in fact many large odd lot lists often only have a few bids per item due to the volume or time constraint imposed on dealers to bid lists. Large lists with small size items, TMC averages 150 items per list, often dictate fewer bids as the time required to research and process tickets cannot cover bid/ask spreads. A better indicator of fair value is often price dispersion as opposed to the depth of bidding. Adding further to the complexity of evaluating bids, most bids are placed minutes before the bid by time, allowing little time for broker evaluation. For an ATS to verify each bid on such large lists in a timely manner would require significant resources. TMC believes that in periods of low liquidity and high volume, such as in 2008 when bids wanted were often the best source of liquidity available to the Street, the market's ability to handle volume spikes will be significantly reduced.

With respect to the ATS's, without further clarification or an exemption, the rule would be difficult to comply with and require a significant re-design in systems for all market participants. For example, TMC receives approximately 2,000 bids wanted daily. The vast majority are submitted via a direct line, whereby the posting client submits the bids wanted using an electronic protocol straight from their internal trade systems. TMC is unaware of the trader on the other side and only has knowledge of which firm originated the bids wanted. In fact, TMC learns of the bids wanted at the same time all users on the site are alerted to the bids wanted.

Furthermore, complicating the fact of who originated the bids wanted, there are many instances where a salesperson, not a trader, has routed the bids wanted directly to the ATS and a trader will not be involved until a client makes a decision to sell. The "involved" trader is completely unknown to the ATS as the participating firm has received all of the bids wanted information electronically and will independently decide who to involve. The same premise holds for firms bidding via API's where TMC only knows of the firm bidding, not the trader. Instances of attaining written seller permission or bidder notification will be virtually impossible.

As a result of the self-directed nature of transacting over an ATS; if an ATS makes available aggregated, bona fide and executable content for comparison purposes, as well as access to reported trade activity, then it has satisfied its obligation to provide the seller all of which it is capable of in terms of establishing an opinion of what constitutes a fair and reasonable price. Therefore, the ultimate responsibility for judging fair and reasonable price as it pertains to bids wanted over an ATS, which by nature supports self directed transaction activity, lies with the market professional who is listing the item. The ability to discuss bids, discuss values, or exchange written permissions, simply does not exist. TMC believes that a "process-based" rule would be appropriate for electronic exchanges. TMC supports the idea that an exchange that treats all participants fairly should satisfy G-18 by using a standard of care as if the auction process was conducted for its own account.

Draft Rule G -43(c)(vi) – Contact of participants submitting erroneous bids

TMC understands the MSRB's attempt to eliminate the inherent conflicts of interest in having brokers contact dealers about their bids in relation to other market participants. While electronic trading does not have these conflicts, TMC supports consideration for electronic exchanges that systematically provide all bidders and sellers with the same information with respect to the reasonableness of their bids. Furthermore, early warning flags based on historic trade information and not based on any of the specific bids placed on a chosen item cannot be interpreted as a conflict of interest. TMC believes that all ATS's should be required to provide a disclosure statement that clearly defines both the auction process and rules of engagement for both the buyer and seller. While voice brokers can intercept an erroneous bid prior to it being formally accepted, transposition errors and other such numeric mistakes are human nature in the bidding process. It would be unfair to penalize a market participant for hitting the "Enter" key when a systematic approach can effectively eliminate clearly aberrant levels.

As mentioned earlier, for clients using internal trade management systems, it can very difficult or impossible to identify which trader is submitting a bid. Sophisticated firms often use a rules based "black box" is submitting a bid and the trader will not be assigned until an execution takes place. TMC believes that ATS's should be enabled to contact a firm to relay only the electronic warning if the ATS's has not received confirmation that a bid has been checked.

TMC supports the MSRB's requirement for ATS's to satisfy G-43(a)(iv) and (c)(vi) by providing systematic notification to bidders, but with undefined rules as to what information can be used as long as the information does not disclose any information on contemporaneous bids. Regulating exactly what should be disclosed and how will retard creativity and limit development of new tools to assist with the bidding process due to concern of violating rules.

Finally, G-43(c)(vi) states that a broker must not contact a bidder until the auction process has concluded. TMC requests clarification on posting bidders, after the bid by time, as to whether their bid is being used or not is appropriate. Having the opportunity to post participants on their bid status during the firm time will free-up capital for the bidders to deploy on other lists. TMC believes the option to post is important to market liquidity and will benefit firms trying to deploy more capital available.

TMC appreciates the opportunity to respond and is available for any further discussion.

Sincerely,

Thomas S. Vales
Chief Executive Officer

1177 Avenue of the Americas
New York, NY 10036
phone: 646.430.6000
fax: 646.430.6250
e-mail: help@tradeweb.com
www.tradeweb.com

May 3, 2011

Via Email at CommentLetters@msrb.org

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2011-18 (February 14, 2011) – Request for Comment on Draft Rule G-43 and Associated Amendments to Rules G-8, G-9 and G-18

Dear Ms. Henry:

Tradeweb Markets LLC (*"**Tradeweb**"*) welcomes the opportunity to respond to MSRB Notice 2011-18 (February 14, 2011) and comment on the MSRB's proposed Draft Rules G-43 and associated amendments to Rules G-8, G-9 and G-18.

Tradeweb is a leading global provider of electronic trading platforms and related data services for the OTC fixed income and derivatives marketplaces. Tradeweb operates three separate electronic trading platforms: (i) a global electronic multi-dealer to institutional customer platform through which institutional investors access market information, request bids and offers, and effect transactions with, dealers that are active market makers in fixed income securities and derivatives, (ii) a platform for retail-sized fixed income securities, known as Tradeweb Retail, and (iii) an inter-dealer platform, called Dealerweb, for U.S. Government bonds and mortgage securities. Tradeweb operates the dealer-to-customer and odd-lot platforms through its registered broker-dealer, Tradeweb LLC, which is also registered as an alternative trading system (*"**ATS**"*) under Regulation ATS promulgated by the SEC under the Securities Exchange Act of 1934. Tradeweb operates its inter-dealer platform through its subsidiary, Hilliard Farber & Co., Inc., which is also a registered broker-dealer and operates Dealerweb as an ATS. Tradeweb LLC is a member of the MSRB, but does not act as a municipal securities dealer; municipal securities are only available for trading on the Tradeweb Retail system and are not available on the other Tradeweb platforms.

Founded as a multi-dealer online marketplace for U.S. Treasury securities in 1998, Tradeweb has been a pioneer in providing market data, electronic trading and trade processing in OTC marketplaces for over 12 years. Since 2006, Tradeweb has offered the Tradeweb Retail system, which enables contributing broker-dealers (*"**Contributors**"*) to post their inventory of securities and other instruments it has available to sell in "retail-size" quantities (generally odd-lot trades less than $1 million notional), together with quantity and firm offer prices. Broker-dealers who submit orders versus the inventory of Contributors (known as *"**Distributors**"*) are able to search and view all posted inventory and request to purchase inventory from a Contributor within certain minimum and maximum size intervals set by the Contributor. At the outset, each

Contributor and Distributor has the ability/choice to enable the other for trading over the Tradeweb Retail system, but once enabled, the trading is anonymous until such time as a trade is effected (at which time, the parties' identities are revealed). A Distributor will, however, be able to identify a Contributor's advertisements if the Distributor and Contributor are part of the same firm, or affiliated. In addition to the foregoing, a Distributor can offer a security it has for sale simultaneously to multiple Contributors in a bid-wanted model. Tradeweb's bid-wanted process is anonymous until the point of execution, and if a transaction is effected, only the counterparties of the transaction are disclosed to each other. In the bid inquiry process, Distributors can set a "Due In" time (i.e., bid collection time period). Contributors have the opportunity to bid or pass within the "Due In" period including access to real-time MSRB transaction data. Distributors can manage the bid-wanted process electronically, including viewing all bids submitted, dealer passes and real-time reported trades from MSRB. Following the transaction, all participants who submit bids in response to a bid-wanted are notified of the winning bid and their bids ranking in the bid-wanted process. Each Contributor and Distributor is responsible for compliance with all applicable laws, as well as the rules of any applicable self-regulatory organization, in connection with any information provided or offer displayed, or transaction effected using such platform.

Tradeweb Retail is designed to give participants the ability to share liquidity and price transparency across a range of fixed income markets. The system was created to allow broker-dealers to more efficiently execute and effect transactions with both their internal sales force as well as on a broker-to-broker basis. By moving the interaction of trading participants onto an electronic network via the internet and modern electronic communication protocols, Tradeweb has created a marketplace with ease of price discovery, transparency of price dissemination, greater speed of execution and liquidity for the entire marketplace to benefit. Distributors have a means to see vast inventories of bonds in a competitively priced market that has improved liquidity and driven down the cost of execution for the end client, and Contributors have a means to reach hundreds if not thousands of market participants with the capital they have at risk, rather than being limited to a narrow scope of liquidity takers based upon relationships or bias.

Tradeweb does not make markets, take positions, or act as a principal or riskless principal in transactions effected on the Tradeweb Retail platform. Moreover, Tradeweb does not participate in the clearance or settlement of trades between Contributors and Distributors; rather, completed transactions are cleared and settled through the customary clearance and settlement procedures of the Contributor and Distributor. As such, the Tradeweb Retail system does not act as a broker's broker and does not offer any such functionality to its participants.

We have reviewed the MSRB's Notice 2011-18 and the draft rules incorporated therein, and respectfully submit that the draft rules do not and are not intended to apply to the Tradeweb Retail system as it currently operates, or the manner in which its participants interact with each other. Moreover, we do not read the reference to electronic systems to be intended to any electronic system offering municipal securities, but rather to those operating a system that offers a broker's broker model – which Tradeweb does not. Nevertheless, we write to seek confirmation (and/or clarification) that Draft Rule G-43 and the associated amendments to Rules G-8, G-9, and G-18 do not apply to (and are not intended to apply to) the current Tradeweb Retail business model.

* * * * * *

If you have any questions concerning our comments, please feel free to contact me. Tradeweb welcomes the opportunity to discuss these issues further with the MSRB and its staff.

Respectfully submitted,

John Cahalane
Managing Director, Head of Tradeweb Retail

Cc: Douglas Friedman, General Counsel

From: John Walsh

Sent: Thursday, April 21, 2011 10:55 AM

To: Comment Letters

Subject: Notice 2011-18

It appears to me to be unworkable to implement such a program and will cause the broker to get less bids and more couched bids

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From: Billups, Keener
Sent: Tuesday, April 26, 2011 1:23 PM
To: Comment Letters
Subject: FW: Notice 2011-18

Please see minor change to my response

From: Billups, Keener
Sent: Wednesday, April 13, 2011 3:00 PM
To: 'commentletters@msrb.org'
Subject: Notice 2011-18

Dear Sirs

I am the Managing Director and Head Trader for the Municipal Department of Wiley Bros – Aintree Capital in Nashville, TN. I believe the proposed changes to how broker's brokers do business if enacted would ultimately create more onerous trading conditions, less liquidity and an overall less friendly purchase or sale environment for market participants. I believe the class of investors that will be most greatly affected would be individual investors, since they are the primary buyers of municipal bonds.

Proposed rule G-43(a)(iv) would put undue pressure on a broker's broker to determine what price is fair. Generally, the market will determine what is fair. I do not believe it is the broker dealer's role to determine suitability for investors. This is especially critical in illiquid market conditions.

Proposed rule G-43(C)(iv) will create less liquidity in the market as a whole. The municipal market is an entirely over-the-counter market that depends on dealers both large and small to provide liquidity. My firm is a small firm that does not have unlimited capital to purchase bonds for inventory. I need the ability to ascertain if I am the best bid on a bid wanted item or not, so that I may be able to properly allocate my firm's capital.

Proposed rule G-43(C)(vi) will also hurt liquidity in the municipal market. As the market has embraced technology, bids are submitted verbally, by email, by Bloomberg messages or on websites. Every trader eventually makes mistakes, mistypes, enters the a bid for the wrong bond etc. Enforcing trader's mistakes does not create better liquidity. Broker's brokers can often tell if an erroneous bid is submitted and aid the liquidity of the bid wanted market by alerting dealers of mistakes. If changing a mistake requires seller approval, there will be many instances where a seller might punish a mistake by forcing a sale at the erroneous bid.

Proposed rule G-43(C)(vii) will add an unnecessary layer of documentation to the daily bid wanted process. I feel that a verbal instruction to raise or lower a bid prior to the broker's brokers submission to the seller should suffice.

Thank you for consideration of my comments on this matter.

Keener Billups
Managing Director
Wiley Bros.--Aintree Capital, LLC
615.782.4101

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where necessary.

From: Billups, Keener
Sent: Wednesday, April 13, 2011 4:00 PM
To: Comment Letters
Subject: Notice 2011-18

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I am the Managing Director and Head Trader for the Municipal Department of Wiley Bros – Aintree Capital in Nashville, TN. I believe the proposed changes to how broker's brokers do business if enacted would ultimately create more onerous trading conditions, less liquidity and an overall less friendly purchase or sale environment for market participants. I believe the class of investors that will be most greatly affected would be individual investors, since they are the primary buyers of municipal bonds.

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Thank you for consideration of my comments on this matter.

Keener Billups
Managing Director
Wiley Bros.--Aintree Capital, LLC
615.782.4101

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From: Greene, Tom

Sent: Thursday, April 21, 2011 12:00 PM

To: Comment Letters

Subject: Notice 2011-18

To The MSRB Board, These proposed rules are going to make our business even more illiquid . I am trying to think how and whom do these rules protect and for the life of me I can only see that if you make a mistake like G-43©(iv) that you get severely penalized. Tell me where or in what other business that no one ever makes a mistake and you can't get out of the situation without making such a major issue out of it. With all the liquidity on all the bid lists that we as traders have to bid all the hundreds of items or thousands of items it is not comprehensible to think there wouldn't ever be a mistake. What sort of perfectionists are you or are you OCD? It appears that you are trying to drive the very industry that you work for out of business. Tom Greene @ William Blair

From: Welbourn, Steve
Sent: Thursday, April 21, 2011 10:54 AM
To: Comment Letters
Subject: Notice 2011-18

I have been trading municipals for 30 years now.. My honest opinion is that most of these rule changes have actually hurt the liquidity in the market.. The retail buyer is still paying full price. The dealer community is paying the price and the risk/reward has gotten very bad. The buyers have full advantage and the retail buyer is still paying full price.. This new rule will cause traders to bid less bonds with the brokers and will further hurt liquidity. The municipal market is not the new york stock exchange and eventually firms will exit this market and it will be a disaster.. Sincerely, and with respect Steve Welbourn

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Wolfe & Hurst Bond Brokers, Inc.
30 Montgomery Street
Jersey City, New Jersey 07302

April 25, 2011

Via e-mail and regular mail

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: **MSRB Notice 2011-18, Request for Comment on Draft Rule G-43 on Broker's Brokers and Associated Amendments**

Dear Mr. Smith:

Please accept this letter as the response of Wolfe & Hurst Bond Brokers Inc. (hereinafter "WHBBI") to the Municipal Securities Rulemaking Board's (hereinafter "MSRB") Notice 2011-18: Request for Comment on MSRB Guidance on Broker's Brokers, dated February 24, 2011. WHBBI also supports the comment letter submitted by the Securities Industry and Financial Markets Association (hereinafter "SIFMA").

WHBBI initially questions the need for and purpose of Proposed Rule G-43. The MSRB contends that additional rulemaking is necessary as a result of clear violations of the current rules by many broker's brokers. WHBBI reiterates SIFMA's position that these new rules do not serve their intended purpose. The existing rules provided FINRA ample opportunity to sanction broker's brokers for activities it felt constituted a violation. The broker's brokers have incorporated the results of those sanctions into their business model and thus there is no need for additional rules but only for enforcement by the regulatory bodies. The market would be better served if the MSRB and FINRA monitored and enforced current rules rather than creating disruptive and unworkable new regulations. As discussed below, the Proposed Rule inhibits the role of the broker's broker in the secondary market and will have the severe unintended consequence of significantly limiting liquidity for retail customers in the bond market.

I. Rule G-43

A. Definition of a Broker's Broker

MSRB Proposed Rule G-43(e)(iii) defines a broker's broker as (1) "a dealer, or separately operated and supervised division or unit of a dealer, (2) that principally effects transactions for other dealers or (3) that holds itself out as a broker's broker. A broker's broker may be (4) a separate company or (5) part of a larger company." In their responsive submissions

to MSRB Notice 2010-35, WHBBI and SIFMA suggested an alternative definition of a broker's broker. Generally, WHBBI argued and maintains that the proposed definition of a broker's broker failed to adequately identify the role and responsibilities of a broker's broker and its important role in the market.

WHBBI recognizes and appreciates that some of the definitional aspects proposed in the comment letters previously submitted by SIFMA and WHBBI were incorporated into section G-43(d)(i) and apart from the definition of a broker's broker in section G-43(e)(iii). For instance, Proposed Rule G-43(d)(i)(C) prohibits a brokers' broker from maintaining municipal securities in any proprietary or other accounts, other than for clearing and settlement purposes. As written, Rule G-43(d)(i)(D) prohibits the participation in syndicates and section G-43(d)(i)(E) requires broker's brokers to execute equally matched trades contemporaneously. While incorporating these aspects into the broker's broker written supervisory procedures is appropriate, WHBBI contends that this tactic leaves the definition inadequate and unclear. The MSRB suggests that incorporating these restrictions in a more expansive definition of a broker's broker would allow "... a firm to escape classification as a broker's broker and, accordingly, avoid application of the rules for broker's brokers." By way of example, the MSRB notes that, "... a firm could simply carry customer accounts and avoid classification as a broker's broker..." For reasons further elaborated in section I(E)(ii) below, WHBBI disagrees with this assessment, especially since a firm carrying customer accounts is not a broker's broker. The limited definition proposed by the MSRB fails to encompass the limited and unique role that a broker's broker actually holds in the market.

A more specific and comprehensive definition of a broker's broker would promote the transparency and clarity sought by the MSRB. Such a definition would also put the broker-dealers utilizing the services of a broker's broker on notice of the duties and responsibilities it should expect to have owed to it and alleviate the MSRB's concern in this regard. A firm failing to abide by the definition, *i.e.* by maintaining customer accounts, should not be permitted to operate as a broker's broker. Thus rendering the phrase "or holds itself out as a broker's broker" unnecessary. **The MSRB should reconfirm and utilize the traditional definition of a broker's broker**. Specifically:

(1) a true broker's broker acts as an agent strictly for broker-dealers and dealer portions of banks in the purchase or sale of fixed income instruments in the secondary market.

(2) a true broker's broker does not have or maintain customer or proprietary accounts, other than for clearance and settlement purposes.

(3) a true broker's broker does not conduct any business with customers, including institutions and Sophisticated Municipal Market Participants ("SMMP's").

(4) a true broker's broker does not hold or receive customer funds or securities.

(5) a true broker's broker is compensated by a commission rather than a mark-up.

(6) a true broker's broker acts as an auctioneer in that it receives a bid-wanted and seeks to obtain bids on that item which satisfy the conditions set by the selling broker-dealer or dealer portion of a bank.

(7) a true broker's broker never and should never participate in the decision to execute a securities transaction or make a determination as to the reasonableness of the price resulting from a bid-wanted auction.

(8) a true broker's broker provides ease to transactions between broker-dealers, which has a particularly significant impact on the ability of owners of small retail-size lots and thinly-traded issues to find liquidity.

(9) a true broker's broker executes all trades as an agent.

Modifying the traditional definition of a broker's broker in the secondary market undermines the important and necessary role that broker's brokers have in providing efficiency, liquidity, and access to the secondary market. **If the broker's broker desires to change their model to be more in-line with the broker dealer, the MSRB should compel them to make such a change in the model and deny them the benefits of conducting themselves as a broker's broker.**

B. Duty of a Broker's Broker

i. Fair Pricing Requirement

Proposed Rule MSRB G-43(a)(i) requires that broker's brokers "...make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions." The Proposed Rule further requires a "broker's broker to employ the same care and diligence in doing so as if the transaction were being done for its own account." The MSRB explains that it "... expects that, if broker's brokers were selling securities for their own account, they would take all of their knowledge about the securities into account in determining whether the bid-wanted had resulted in a fair and reasonable price."

WHBBI maintains that such a responsibility should not be placed on broker's brokers. Broker's brokers should be required to make an effort to conduct a well-run and widely disseminated bid-wanted auction. In addition, WHBBI agrees that a broker's broker "...must not take any action that works against the client's interest to receive advantageous pricing" as required by proposed Rule G-43(a)(ii). However, a broker's broker cannot be expected to make a determination as to the reasonableness of the high bid in relation to fair market value of the security. This is not what is expected of them by their clients and would indeed be a hindrance to them. The role of a broker's broker is and has always been to conduct a bid-wanted auction. Basic auction rules dictate that the responsibilities of the auctioneer or broker's broker do not include any evaluation as to the reasonableness of the price. In both cases, the buyer and seller determine whether they agree to the best bid obtained at the close of the auction or bid-wanted.

Moreover, it is not practicable or efficient to require a broker's broker to determine whether a bid-wanted results in a fair and reasonable price. This responsibility should remain with the professionals that are employed in such a capacity on behalf of their customers. A broker's broker acts strictly as an intermediary for broker-dealers and dealer portions of banks. As such, the broker's broker does not engage in making determinations as to the fair market value of the security and such an obligation should not be imposed on them. The MSRB noted that in order to conduct a proper bid-wanted auction broker's brokers consult their trading history, bid pads, pass history, execution history and ticketing/operational history. A huge flaw of using historical data is that there is a presumption that all underlying elements then are appropriate now. This demonstrates a lack of understanding on the part of the regulators. Many of these referenced tools are repetitive and would not provide additional information to serve the

end of determining a fair and reasonable price. The suggestion that the broker's brokers consider the pass history is not relevant in conducting a proper bid-wanted auction. Overall, this information is insufficient to make a determination as to whether the result of a bid-wanted equates to the fair market value of a security. Importantly, a broker's broker is not privileged to adequate information with which it might be able to "employ the same care and diligence ... as if the transaction were being done for its own account." This is a ridiculous standard. For example, a broker's broker is not privy to information regarding new issues and does not receive a copy of the official statement distributed by the municipal issuer whereas a broker-dealer or dealer bank is entitled to such documents. Moreover, a broker's broker does not have information regarding the customer, making it unable to determine whether a given bid-wanted result is suitable. Additionally, the investment objectives of a broker's broker could be and most likely are different from that of the retail customer.

Additional factors make it impractical for a broker's broker to determine fair market value. For instance, many bonds which are the subject of securities transactions executed by broker's brokers are not regularly traded or rated (unlike equities), making it unfeasible to determine the current market value on the basis of the history available to the broker's broker. This restricts the ability of a broker's broker to comply with proposed rule G-43(c)(i). Similarly, there are circumstances wherein it would be unclear whether a broker's broker should make the required written disclosures. For instance, a client of the broker's broker that regularly bids on certain items may be out of the office on a given day and unable to enter a bid. It is unclear under the proposed rule whether this is a circumstance where the broker's broker would be required to obtain written permission from the client to move forward with the transaction. Contrary to the MSRB's position, these circumstances, amongst others, would result in frequent disclosures proposed by Rule G-43(a)(iv) which would undoubtedly cause a disruption to the market and significantly limit liquidity for retail customers.

Requiring a broker's broker to determine whether a given price is fair and reasonable may have additional unintended consequences. The broker's broker may ultimately be held liable for making such recommendations despite the fact that they were not privy to all information necessary to make the initial recommendation. Such repercussions were recently demonstrated when the Internal Revenue Service audited general obligations bonds issued in 2005 and inquired as to whether or not they should have been issued as tax-free municipal bonds. Similarly, under the Proposed Rule the broker's broker could become liable for comparable mistakes even though it does not have access to important information such as the issuer's official statement. Ultimately, the responsibility of determining fair pricing must remain with the professional broker-dealer or dealer portion of banks who dictate the terms of the bid-wanted auction and possesses all necessary information.

Due to their limited role as an intermediary, broker's brokers should not be required to make any determinations as to the reasonableness of a price in relation to prevailing market conditions. The clients of a broker's brokers, broker-dealers and dealer portions of banks, are in a far better position to make a determination as to whether a price is fair and therefore this responsibility should be solely imposed on them. Contrary to the stated purpose of the MSRB, imposing these responsibilities on broker's brokers will have the unintended consequence of

stripping the market of liquidity for retail customers, especially those attempting to sell small lots.

ii. Agency and Written Disclosures

MSRB's Notice 2011-18 states that Proposed Rule G-43 no longer addresses whether broker's broker execute trades on an agency or principal basis. The Notice provides that if a broker's broker has customers, its pricing obligations to them will be governed by either Rule G-18, in the case of agency trades, or Rule G-30, in the case of principal trades. WHBBI contends that a broker's broker should be prohibited from having customers, or maintaining customer accounts as suggested in Proposed Rule G-43(d)(i)(C). As such, *all trades executed by a broker's broker will be agency transactions.*

Rule G-43(a)(iii) permits broker's brokers to act as agent for both potential seller and bidders in a bid-wanted if it has received express consent from the potential seller and bidders. The MSRB interpreted SIFMA's concern that written disclosures would discourage dealers from committing capital to the secondary market as a concern that written disclosures would slow down trading. The MSRB stated that it believed "most retail customers would prefer a better price to a speedy trade." **This is not accurate as there are many instances where a customer requires prompt liquidation of assets and it is not the role of the broker's broker to impede on the transaction**. WHBBI further contends that it would be unworkable and inefficient to obtain express consent from each bidder for each transaction. This would not only decrease the speed at which transactions are processed, but could prevent the trade entirely. Requiring such disclosures would have a substantially detrimental effect on the liquidity so valued in the market. This is especially true for retail or small transactions. If the MSRB is insistent on requiring written consent from all parties to act as agent, WHBBI suggests that the MSRB authorize a blanket acknowledgement at the outset of the relationship of the broker's broker with the broker-dealer or dealer portion of a bank. Under this proposal, if a broker-dealer or dealer portion of a bank refuses to consent to the broker's broker acting as agent for both the seller and the buyer, then the broker's broker should not do business with that firm.

C. Use of Bid-Wanteds

Proposed Rule G-43(b) states that "a bid-wanted conducted in a manner that satisfies the requirements of section (c) of this rule will generally satisfy the obligation of a broker's broker under section (a)(i) of this rule, depending on the specific facts and circumstances of the transaction. Yet in its comments to the responses received regarding Notice 2010-35, the MSRB suggested that the obligation of a broker's broker is more than to conduct a well run bid-wanted. In addition, the MSRB stated that "...whether the bid-wanted actually satisfies this duty will depend on the specific facts and circumstances of the transaction, including whether the broker's broker has satisfied its duty of fair dealing under Rule G-17."

WHBBI does not dispute its responsibility under Rule G-17 to avoid "...engag[ing] in any deceptive, dishonest or unfair practice." However, the proposed Rule is unclear as to the circumstances under which the requirements of subsection (c) will not be met. It is also requested that the MSRB clarify how it is that compliance with G-43(c) generally satisfies the

obligations of G-43(a) yet the Proposed Rule further requires a broker's broker to conduct its business as though it were transacting for its own account.

D. Correcting Bids and Preferential Treatment

Proposed Rules G-43(a)(iv), G-43(c)(iv), and G-43(c)(vi) relate to the ability of a broker's broker to correct clearly erroneous bids. As discussed above, a broker's broker should not be responsible for making a price determination regarding the current fair market value of a security. However, bids may be submitted that are clearly erroneous, *i.e.* far above or below all other bids received. ***It is important that such erroneous bids not reach the marketplace.*** A bid may result from unavoidable human error, *i.e.* entering a bid on item number "11" rather than properly on item "111." When it is clear that such an error has occurred, the broker's broker should be permitted to promptly ensure that it is corrected. To require otherwise would have an adverse effect on liquidity and increase disputes and arbitrations between firms.

Proposed Rule G-43(c)(vi), which requires the broker's broker to obtain written permission from the seller to contact a bidder regarding an erroneous bid, is not viable. This proposed rule sets a precarious standard in that if the seller refuses to grant such permission, the broker's broker will be required to accept the clearly erroneous bid. This will result in erroneous bids entering the market place and being viewed by the public. Allowing a clearly erroneous bid is unfair trading and dishonest and should not be a requirement imposed on the broker's brokers by the MSRB. It is also contradictory to the policy behind the recent Market Access Rule of the Securities Exchange Commission concerning the prevention of erroneous bids from entering the market. Moreover, impeding on the broker's brokers ability to correct erroneous bid submissions will also damage the important relationship of the broker's broker with that bidder. This will also lead to more disputes and arbitrations since the broker-dealer who submits an erroneous bid will more than likely refuse to accept the fixed income securities that were the subject of a mistaken transaction.

In the alternative, the Proposed Rule suggests that if there is advanced disclosure to the client, then the broker's broker may notify all bidders for the bonds that a potentially erroneous bid for the security has been submitted and offer all bidders the opportunity to adjust their bids. However, allowing all bidders to adjust their bids in the case of the submission of one clearly erroneous bid is a manipulation of the market. It is likely that all bidders would reconsider and/or resubmit their bid. This does not foster the MSRB's ultimate goal of attaining fair prices or liquidity for retail customers.

Similarly, Proposed Rule G-43(c)(iv) prohibits broker's brokers from giving preferential information to bidders in bid-wanteds on where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out)." The MSRB stated its concern with the opportunity for abuse if broker's brokers are allowed to contact bidders selectively regarding bid prices prior to the deadline for the submission of bids. The MSRB also expressed its dissatisfaction with the prospect of relying on certifications from broker's brokers indicating that they only corrected clearly erroneous bids. WHBBI suggests that this is not a valid concern and should be overtaken by the public policy against erroneous bids. There must be a mechanism for correcting bids

submitted in error without relying strictly on the seller who may opt to inappropriately accept that bid. The efforts of a broker's broker to prevent erroneous bids from entering the public market should not be viewed as inappropriate preferential treatment.

Broker's brokers should be permitted to notify any bidder if their submission was clearly erroneous without the consent of the seller and without providing the opportunity to all bidders. This would foster the ultimate goals of a fair, transparent and efficient market.

E. Policies and Procedures

Generally, WHBBI agrees with Proposed Rule G-43(d). However, WHBBI suggests that Rule G-43(d)(i)(F) should be clarified to note that a broker's broker should be compensated specifically by commissions and Rule G-43(d)(i)(J) should be eliminated.

i. Commission

Proposed Rule G-43(d)(i)(F) provides that the compensation of a broker's broker must be disclosed to each contra-party in matched transactions. As discussed, since a broker's broker does not have customers and only acts on behalf of a broker-dealer or dealer portion of a bank, it should only be compensated by commissions. Other methods of compensation, *i.e.* through a mark-up, should remain reserved for those transactions with customers. WHBBI suggests that the MSRB add to the definition of a broker's broker that they are only compensated by commissions and not by a mark-up as set forth above.

ii. Customers

A true broker's broker does not and should not have customers. As discussed at length above, the role of a broker's broker is limited to acting as an intermediary and facilitating transactions on behalf of broker-dealers and dealer portions of banks. The previously followed SEC net capital requirements in Rule 15c3-1(a)(8)(ii) specifically prohibit a broker's broker from having customers. The section further prohibits a broker's broker from having or maintaining any securities in its propriety or other accounts. This rule remains in effect, thus any broker's broker conducting business with a customer would be violating the rules of the SEC.

Moreover, modifying this definition by permitting broker's brokers to conduct transactions with customers fundamentally alters the role of the broker's broker. By engaging in transactions directly with customers, including Sophisticated Municipal Market Professionals ("SMMP's") and institutions, broker's brokers would be practicing unfair dealing. Specifically, executing transactions with customers would by placing the broker's broker in direct competition with their clients. Broker's brokers have an agency relationship with their broker-dealer clients and transactions with customers would violate the duties imposed upon the broker's broker acting as agent. Preventing broker's brokers from having customers is not anti-competitive, as suggested by the MSRB. Broker's brokers have never had customers due to their limited role in the market and should not be permitted to engage in such transactions now.

Proposed Rule G-43(d)(i)(J) also contradicts proposed Rule G-43(d)(i)(C) which prohibits broker's brokers from maintaining any municipal securities in any proprietary or other

accounts, other than for clearance and settlement purposes. If a broker's broker cannot have customer accounts, then it follows that they cannot have customers and must act strictly as an intermediary.

II. Rule G-18

Proposed Rule G-18 should not apply to broker's brokers since it does not have customers. Please see above Section I(b)(i) for further elaboration of this point.

III. Electronic Trading Systems

With regard to electronic trading systems, WHBBI wholly agrees with SIFMA's position that the MSRB's request for comment on the standards to be applied to electronic trading systems is anti-competitive. Imposing less stringent requirements on electronic trading systems would give them an unfair advantage over traditional broker's brokers. The MSRB suggests actions to be taken by an electronic trading system that expressly contradict the requirements to be imposed on a traditional broker's broker. Specifically, the MSRB suggests that it may permit electronic trading systems to satisfy the requirements of proposed Rule G-43(a)(iv) and (c)(vi) by providing notification to a bidder of a potentially erroneous bid indicating that its bid deviates from the most recently reported trades for the security by more than a pre-determined amount. This rule is in fact the very behavior that the MSRB intends to prevent traditional broker's brokers from engaging in. Such a double standard would surely reduce competition in the market by providing electronic trading systems an unfair-advantage to the demise of the traditional broker's broker. The suggested rules are discriminatory against the broker's broker and should not be under further consideration. Any entity acting as a broker's broker should be held to the same standard under the MSRB Rules. Creating different standards for electronic trading systems would result in market manipulation forced by the regulatory bodies.

We appreciate the opportunity given to WHBBI by the MSRB to comment on Notice 2011-18 and welcome further discussion on the issues addressed.

Sincerely,

O. Gene Hurst
O. Gene Hurst
President

[legal/wolfehurst\msrb\msrbresponse\MSRBResponsetoRequestforCommentNotice2011-18]

Wolfe & Hurst Bond Brokers, Inc.
30 Montgomery Street
Jersey City, New Jersey 07302

April 21, 2011

Via e-mail and regular mail

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: **MSRB Notice 2011-18, Request for Comment on Draft Rule G-43 on Broker's Brokers and Associated Amendments**

Dear Mr. Smith:

Please accept this letter as the response of Wolfe & Hurst Bond Brokers Inc. (hereinafter "WHBBI") to the Municipal Securities Rulemaking Board's (hereinafter "MSRB") Notice 2011-18: Request for Comment on MSRB Guidance on Broker's Brokers, dated February 24, 2011. WHBBI also supports the comment letter submitted by the Securities Industry and Financial Markets Association (hereinafter "SIFMA").

WHBBI initially questions the need for and purpose of Proposed Rule G-43. The MSRB contends that additional rulemaking is necessary as a result of clear violations of the current rules by many broker's brokers. WHBBI reiterates SIFMA's position that these new rules do not serve their intended purpose. The existing rules provided FINRA ample opportunity to sanction broker's brokers for activities it felt constituted a violation. The broker's brokers have incorporated the results of those sanctions into their business model and thus there is no need for additional rules but only for enforcement by the regulatory bodies. The market would be better served if the MSRB and FINRA monitored and enforced current rules rather than creating disruptive and unworkable new regulations. As discussed below, the Proposed Rule inhibits the role of the broker's broker in the secondary market and will have the severe unintended consequence of significantly limiting liquidity for retail customers in the bond market.

I. Rule G-43

A. Definition of a Broker's Broker

MSRB Proposed Rule G-43(e)(iii) defines a broker's broker as (1) "a dealer, or separately operated and supervised division or unit of a dealer, (2) that principally effects transactions for other dealers or (3) that holds itself out as a broker's broker. A broker's broker may be (4) a separate company or (5) part of a larger company." In their responsive submissions

to MSRB Notice 2010-35, WHBBI and SIFMA suggested an alternative definition of a broker's broker. Generally, WHBBI argued and maintains that the proposed definition of a broker's broker failed to adequately identify the role and responsibilities of a broker's broker and its important role in the market.

WHBBI recognizes and appreciates that some of the definitional aspects proposed in the comment letters previously submitted by SIFMA and WHBBI were incorporated into section G-43(d)(i) and apart from the definition of a broker's broker in section G-43(e)(iii). For instance, Proposed Rule G-43(d)(i)(C) prohibits a brokers' broker from maintaining municipal securities in any proprietary or other accounts, other than for clearing and settlement purposes. As written, Rule G-43(d)(i)(D) prohibits the participation in syndicates and section G-43(d)(i)(E) requires broker's brokers to execute equally matched trades contemporaneously. While incorporating these aspects into the broker's broker written supervisory procedures is appropriate, WHBBI contends that this tactic leaves the definition inadequate and unclear. The MSRB suggests that incorporating these restrictions in a more expansive definition of a broker's broker would allow "… a firm to escape classification as a broker's broker and, accordingly, avoid application of the rules for broker's brokers." By way of example, the MSRB notes that, "… a firm could simply carry customer accounts and avoid classification as a broker's broker…" For reasons further elaborated in section I(E)(ii) below, WHBBI disagrees with this assessment, especially since a firm carrying customer accounts is not a broker's broker. The limited definition proposed by the MSRB fails to encompass the limited and unique role that a broker's broker actually holds in the market.

A more specific and comprehensive definition of a broker's broker would promote the transparency and clarity sought by the MSRB. Such a definition would also put the broker-dealers utilizing the services of a broker's broker on notice of the duties and responsibilities it should expect to have owed to it and alleviate the MSRB's concern in this regard. A firm failing to abide by the definition, *i.e.* by maintaining customer accounts, should not be permitted to operate as a broker's broker. Thus rendering the phrase "or holds itself out as a broker's broker" unnecessary. **<u>The MSRB should reconfirm and utilize the traditional definition of a broker's broker</u>**. Specifically:

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Modifying the traditional definition of a broker's broker in the secondary market undermines the important and necessary role that broker's brokers have in providing efficiency, liquidity, and access to the secondary market. If the broker's broker desires to change their model to be more in-line with the broker dealer, compel them to make such a change in the model and deny them the benefits of conducting themselves as a broker broker.

B. Duty of a Broker's Broker

i. Fair Pricing Requirement

Proposed Rule MSRB G-43(a)(i) requires that broker's brokers "...make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions." The Proposed Rule further requires a "broker's broker to employ the same care and diligence in doing so as if the transaction were being done for its own account." The MSRB explains that it "... expects that, if broker's brokers were selling securities for their own account, they would take all of their knowledge about the securities into account in determining whether the bid-wanted had resulted in a fair and reasonable price."

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Moreover, it is not practicable or efficient to require a broker's broker to determine whether a bid-wanted results in a fair and reasonable price. This responsibility should remain with the professionals that are employed in such a capacity on behalf of their customers. A broker's broker acts strictly as an intermediary for broker-dealers and dealer portions of banks. As such, the broker's broker does not engage in making determinations as to the fair market value of the security and such an obligation should not be imposed on them. The MSRB noted that in order to conduct a proper bid-wanted auction broker's brokers consult their trading history, bid pads, past history, execution history and ticketing/operational history. A hugh flaw of using historical data is that there is a presumption that all underlying elements then are appropriate now. This demonstrates a lack of understanding on the part of the regulators. Many of these referenced tools are repetitive and would not provide additional information to serve the end of determining a fair and reasonable price. The suggestion that the broker's brokers consider

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Additional factors make it impractical for a broker's broker to determine fair market value. For instance, many bonds which are the subject of securities transactions executed by broker's brokers are not regularly traded or rated (unlike equities), making it unfeasible to determine the current market value on the basis of the history available to the broker's broker. This restricts the ability of a broker's broker to comply with proposed rule G-43(c)(i). Similarly, there are circumstances wherein it would be unclear whether a broker's broker should make the required written disclosures. For instance, a client of the broker's broker that regularly bids on certain items may be out of the office on a given day and unable to enter a bid. It is unclear under the proposed rule whether this is a circumstance where the broker's broker would be required to obtain written permission from the client to move forward with the transaction. Contrary to the MSRB's position, these circumstances, amongst others, would result in frequent disclosures proposed by Rule G-43(a)(iv) which would undoubtedly cause a disruption to the market and significantly limit liquidity for retail customers.

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Rule G-43(a)(iii) permits broker's brokers to act as agent for both potential seller and bidders in a bid-wanted if it has received express consent from the potential seller and bidders. The MSRB interpreted SIFMA's concern that written disclosures would discourage dealers from committing capital to the secondary market as a concern that written disclosures would slow down trading. The MSRB stated that it believed "most retail customers would prefer a better price to a speedy trade." **This is not accurate as there are many instances where a customer requires prompt liquidation of assets and it is not the role of the broker's broker to impede on the transaction**. WHBBI further contends that it would be unworkable and inefficient to obtain express consent from each bidder for each transaction. This would not only decrease the speed at which transactions are processed, but could prevent the trade entirely. Requiring such disclosures would have a substantially detrimental effect on the liquidity so valued in the market. This is especially true for retail or small transactions. If the MSRB is insistent on requiring written consent from all parties to act as agent, WHBBI suggests that the MSRB authorize a blanket acknowledgement at the outset of the relationship of the broker's broker with the broker-dealer or dealer portion of a bank. Under this proposal, if a broker-dealer or dealer portion of a bank refuses to consent to the broker's broker acting as agent for both the seller and the buyer, then the broker's broker should not do business with that firm.

C. Use of Bid-Wanteds

Proposed Rule G-43(b) states that "a bid-wanted conducted in a manner that satisfies the requirements of section (c) of this rule will generally satisfy the obligation of a broker's broker under section (a)(i) of this rule, depending on the specific facts and circumstances of the transaction. Yet in its comments to the responses received regarding Notice 2010-35, the MSRB suggested that the obligation of a broker's broker is more than to conduct a well run bid-wanted. In addition, the MSRB stated that "...whether the bid-wanted actually satisfies this duty will depend on the specific facts and circumstances of the transaction, including whether the broker's broker has satisfied its duty of fair dealing under Rule G-17."

WHBBI does not dispute its responsibility under Rule G-17 to avoid "...engag[ing] in any deceptive, dishonest or unfair practice." However, the proposed Rule is unclear as to the circumstances under which the requirements of subsection (c) will not be met. It is also requested that the MSRB clarify how it is that compliance with G-43(c) generally satisfies the obligations of G-43(a) yet the Proposed Rule further requires a broker's broker to conduct its

business as though it were transacting for its own account (which may have different reasons for buying or selling).

D. Correcting Bids and Preferential Treatment

Proposed Rules G-43(a)(iv), G-43(c)(iv), and G-43(c)(vi) relate to the ability of a broker's broker to correct clearly erroneous bids. As discussed above, a broker's broker should not be responsible for making a price determination regarding the current fair market value of a security. However, bids may be submitted that are clearly erroneous, *i.e.* far above or below all other bids received. *It is important that such erroneous bids not reach the marketplace.* A bid may result from unavoidable human error, *i.e.* entering a bid on item number "11" rather than properly on item "111." When it is clear that such an error has occurred, the broker's broker should be permitted to promptly ensure that it is corrected.

Proposed Rule G-43(c)(vi), which requires the broker's broker to obtain written permission from the seller to contact a bidder regarding an erroneous bid, is not viable. This proposed rule sets a precarious standard in that if the seller refuses to grant such permission, the broker's broker will be required to accept the clearly erroneous bid. This will result in erroneous bids entering the market place and being viewed by the public. Allowing a clearly erroneous bid is unfair trading and dishonest and should not be a requirement imposed on the broker's brokers by the MSRB. It is also contradictory to the policy behind the recent Market Access Rule of the Securities Exchange Commission concerning the prevention of erroneous bids from entering the market. Moreover, impeding on the broker's brokers ability to correct erroneous bid submissions will also damage the important relationship of the broker's broker with that bidder. This will also lead to more disputes and arbitrations since the broker-dealer who submits an erroneous bid will more than likely refuse to accept the fixed income securities that were the subject of a mistaken transaction.

In the alternative, the Proposed Rule suggests that if there is advanced disclosure to the client, then the broker's broker may notify all bidders for the bonds that a potentially erroneous bid for the security has been submitted and offer all bidders the opportunity to adjust their bids. However, allowing all bidders to adjust their bids in the case of the submission of one clearly erroneous bid is a manipulation of the market. It is likely that all bidders would reconsider and/or resubmit their bid. This does not foster the MSRB's ultimate goal of attaining fair prices or liquidity for retail customers.

Similarly, Proposed Rule G-43(c)(iv) prohibits broker's brokers from giving preferential information to bidders in bid-wanteds on where they currently stand in the bidding process (including, but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out)." The MSRB stated its concern with the opportunity for abuse if broker's brokers are allowed to contact bidders selectively regarding bid prices prior to the deadline for the submission of bids. The MSRB also expressed its dissatisfaction with the prospect of relying on certifications from broker's brokers indicating that they only corrected clearly erroneous bids. WHBBI suggests that this is not a valid concern and should be overtaken by the public policy against erroneous bids. There must be a mechanism for correcting bids submitted in error without relying strictly on the seller who may opt to inappropriately accept

that bid. The efforts of a broker's broker to prevent erroneous bids from entering the public market should not be viewed as inappropriate preferential treatment.

Broker's brokers should be permitted to notify any bidder if their submission was clearly erroneous without the consent of the seller and without providing the opportunity to all bidders. This would foster the ultimate goals of a fair, transparent and efficient market.

E. Policies and Procedures

Generally, WHBBI agrees with Proposed Rule G-43(d). However, WHBBI suggests that Rule G-43(d)(i)(F) should be clarified to note that a broker's broker should be compensated specifically by commissions and Rule G-43(d)(i)(J) should be eliminated.

i. Commission

Proposed Rule G-43(d)(i)(F) provides that the compensation of a broker's broker must be disclosed to each contra-party in matched transactions. As discussed, since a broker's broker does not have customers and only acts on behalf of a broker-dealer or dealer portion of a bank, it should only be compensated by commissions. Other methods of compensation, *i.e.* through a mark-up, should remain reserved for those transactions with customers. WHBBI suggests that the MSRB add to the definition of a broker's broker that they are only compensated by commissions and not by a mark-up as set forth above.

ii. Customers

A true broker's broker does not and should not have customers. As discussed at length above, the role of a broker's broker is limited to acting as an intermediary and facilitating transactions on behalf of broker-dealers and dealer portions of banks. The previously followed SEC net capital requirements in Rule 15c3-1(a)(8)(ii) specifically prohibits a broker's broker from having customers. The section further prohibits a broker's broker from having or maintaining any securities in its propriety or other accounts. This rule remains in effect, thus any broker's broker conducting business with a customer would be violating the rules of the SEC.

Moreover, modifying this definition by permitting broker's brokers to conduct transactions with customers fundamentally alters the role of the broker's broker. By engaging in transactions directly with customers, including Sophisticated Municipal Market Professionals ("SMMP's") and institutions, broker's brokers would be practicing unfair dealing. Specifically, executing transactions with customers would by placing the broker's broker in direct competition with their clients. Broker's brokers have an agency relationship with their broker-dealer clients and transactions with customers would violate the duties imposed upon the broker's broker acting as agent. Preventing broker's brokers from having customers is not anti-competitive, as suggested by the MSRB. Broker's brokers have never had customers due to their limited role in the market and should not be permitted to engage in such transactions now.

Proposed Rule G-43(d)(i)(J) also contradicts proposed Rule G-43(d)(i)(C) which prohibits broker's brokers from maintaining any municipal securities in any proprietary or other

accounts, other than for clearance and settlement purposes. If a broker's broker cannot have customer accounts, then it follows that they cannot have customers and must act strictly as an intermediary.

II. Rule G-18

Proposed Rule G-18 should not apply to broker's brokers since it does not have customers. Please see above Section I(b)(i) for further elaboration of this point.

III. Electronic Trading Systems

With regard to electronic trading systems, WHBBI wholly agrees with SIFMA's position that the MSRB's request for comment on the standards to be applied to electronic trading systems is anti-competitive. Imposing less stringent requirements on electronic trading systems would give them an unfair advantage over traditional broker's brokers. The MSRB suggests actions to be taken by an electronic trading system that expressly contradict the requirements to be imposed on a traditional broker's broker. Specifically, the MSRB suggests that it may permit electronic trading systems to satisfy the requirements of proposed Rule G-43(a)(iv) and (c)(vi) by providing notification to a bidder of a potentially erroneous bid indicating that its bid deviates from the most recently reported trades for the security by more than a pre-determined amount. This rule is in fact the very behavior that the MSRB intends to prevent traditional broker's brokers from engaging in. Such a double standard would surely reduce competition in the market by providing electronic trading systems an unfair-advantage to the demise of the traditional broker's broker. The suggested rules are discriminatory against the broker's broker and should not be under further consideration. Any entity acting as a broker's broker should be held to the same standard under the MSRB Rules. Creating different standards for electronic trading systems would result in market manipulation forced by the regulatory bodies.

We appreciate the opportunity given to WHBBI by the MSRB to comment on Notice 2011-18 and welcome further discussion on the issues addressed.

Sincerely,

O. Gene Hurst
O. Gene Hurst
President

[legal/wolfehurst\msrb\msrbresponse\MSRBResponsetoRequestforCommentNotice2011-18]

From: KATHLEEN MURPHY, ZIEGLER CAPITAL MARK
Sent: Wednesday, April 13, 2011 12:37 PM
To: Comment Letters
Subject: COMMENT ON RULE G-8, G-9 AND G-18

TO WHOM IT MAY CONCERN,
I HAVE BEEN IN THE MUNI BOND BUSINESS FOR OVER 30 YRS IN VARIOUS JOB CAPACITIES. I HAVE BEEN A BROKER'S BROKER (JJK FOR 7 YRS) AS WELL AS A MUNI BOND TRADER ON THE DEALER SIDE, AND FEEL VERY CONCERNED THAT THE PROPOSED NEW AND ADJUSTED AMENDMENTS FOR HOW BROKER'S BROKERS WILL HAVE TO CONDUCT THEIR BID WANTED BUSINESS WILL BE FAR TOO CUMBERSOME AND PLACE UNREALISTIC EXPECTATIONS IN THE ROLE OF THE BROKER'S BROKER IN BID WANTED SCENARIOS. (ESPECIALLY WHEN THE MARKET PLACE IS IN A FREE FALL DUE TO SOME EXTENUATING CIRCUMSTANCE-SUCH AS BUDGET DEBATES, POSSIBLE NUCLEAR MELTDOWN IN JAPAN, CRISES IN PORTUGAL, UNREST AND TURMOIL IN THE MIDEAST- TO NAME A FEW ONGOING ISSUES THAT AFFECT OUR MARKET PLACE). I DO NOT SEE HOW THESE NEW ADMENDMENTS WILL IN ANYWAY IMPROVE UPON THE ROLE OF THE BROKER'S BROKERS, WHO WORK VERY HARD, AND ARE VERY CONSCIENTIOUSLY IN DEALING WITH ALL THEIR CUSTOMERS TO GET THE BEST AND MOST FAIR PRICE POSSIBLE. SHOULD YOU WISH TO CONTACT ME, I CAN BE REACHED AT 312-596-1543. KATHLEEN R. MURPHY