

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-wanted 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-wanted 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-wanted 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