**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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn1)

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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn2) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn3) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn4)

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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn5) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn6) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn7) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn8) and that the bid is by its very nature reasonable and fair. [[9]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn9)

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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn10) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn11) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn12) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn13) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn14) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn15)

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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn16)

**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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn17) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn18) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn19) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn20) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn21) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn22) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn23) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn24) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn25) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn26) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn27) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn28) 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

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**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.

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**TEXT OF REVISED DRAFT AMENDMENTS TO RULES G-8 AND G-9 AND DRAFT AMENDMENT TO RULE G-18****[[29]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftn29)**

**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)](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2004/2004-03.aspx).

[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)](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-18.aspx).

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

[[1]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref1) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref2) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref3) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref4) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref5) The pre-determined parameters would not be required to be used in offerings.

[[6]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref6) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref7) *See also* letters of Stifel and Wolfe & Hurst.

[[8]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref8) *See also* letter of R. Seelaus.

[[9]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref9) *See also* letter of Wiley Bros.

[[10]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref10) *See also* letters of RW Smith; Stoever; Wiley Bros.; and Wolfe & Hurst.

[[11]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref11) *See also* letter of Ziegler.

[[12]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref12) *See al*so letter of Hartfield Titus.

[[13]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref13) *See also* letter of Hartfield Titus.

[[14]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref14) 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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref15) *See also* letter of RW Smith.

[[16]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref16) *See also* letter of RBI.

[[17]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref17) *See also* letters of Connors; KeyBanc; RBI; Seven Points Capital; Stoever; and Wiley Bros.

[[18]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref18) Hartfield Titus said such notifications should be permitted “after the bidding is closed.”

[[19]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref19) *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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref20) *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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref21) *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]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref22) *See also* letter of William Blair.

[[23]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref23) *See also* letter of RBI.

[[24]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref24) *See also* letter of Wolfe & Hurst.

[[25]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref25) *See also* letters of Hartfield Titus; RW Smith; Sentinel; and Wolfe & Hurst.

[[26]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref26) *See* [Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems (March 26, 2001)](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2001/IN-G-12-3-26-2001.aspx).

[[27]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref27) *See also* letter of RW Smith.

[[28]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref28) *See also* letters of RW Smith and Wolfe & Hurst.

[[29]](http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-50.aspx%22%20%5Cl%20%22_ftnref29) Marked to show changes from existing Rules G-8, G-9, and G-18. Underlining indicates additions; strikethrough denotes deletions.