

November 3, 2011

VIA ELECTRONIC MAIL TO CommentLetters@msrb.org

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

Re: MSRB Notice 2011-50

Dear Mr. Smith:

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

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

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

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

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

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

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

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

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

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

Sincerely,



Michael Nicholas
CEO