

April 16, 2012

VIA ELECTRONIC MAIL TO rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. SR-MSRB-2012-04

Dear Ms. Murphy:

The Bond Dealers of America (“BDA”) is pleased to offer comments on Securities and Exchange Commission (“Commission”) Release No. 34-66625; File No. SR-MSRB-2012-04 Self-Regulatory Organizations; Municipal Securities Rulemaking Board (“MSRB”); Notice of Filing of Proposed Rule G-43, on Broker’s Brokers; Proposed Amendments to Rule G-8, on Books and Records, Rule G-9, on Record Retention, and Rule G-18, on execution of Transactions; and a Proposed Interpretive Notice on the Duties of Dealers That Use the Services of Broker’s Brokers (the “Proposed Rule”). The BDA is the Washington, DC based trade association representing securities dealers and banks focused primarily on the U.S. fixed income markets.

BDA is pleased that the MSRB determined it appropriate to except certain alternative trading systems from the definition of “broker’s broker” in Proposed Rule G-43 if, among other things, “it utilizes only automated and electronic means to communicate with bidders and sellers in a systematic and non-discretionary fashion (with the exception of communications that are solely clerical or ministerial in nature and communications that occur after a trade has been executed).”¹ The reason given by the MSRB for excepting alternative trading systems is that “they do not engage in the types of voice communications that have led to abuses in the past.”² However, some alternative trading systems employ specialized voice-brokers who do not receive commissions and work solely to facilitate the operation of the alternative trading systems. These voice-brokers may interact with subscribers prior to the execution of a trade simply to provide notice of an opportunity to trade a particular security in which a subscriber may be interested. There is some confusion as to whether these alternative trading systems would qualify for the exemption from the definition of broker’s broker. BDA would request that the Proposed Rule be revised to clarify what types of communications would qualify as clerical or ministerial to avoid any confusion as well as to avoid imposing a regulatory burden more broadly than may be necessary to achieve the desired goals.

¹ Proposed Rule G-43(d)(iii)(A).

² Exchange Act Release No. 34-66625 (March 20, 2012), 77 FR 17548 at 17555 (March 26, 2012).

BDA is also pleased that the MSRB removed the requirement to disclose to a seller the name of the customer who successfully placed the high bid in a bid-wanted or an offering at the time of the trade. However, the Proposed Rule still requires that if a broker's broker allows customers or affiliates to place bids that the broker's broker disclose to the seller if the high bid in a bid-wanted or offering is from a customer or an affiliate of the broker's broker. Anonymity is an extremely important component of the utility of an intermediary for both voice-brokers and alternative trading systems in the municipal market. Informing a seller that a buyer is either a customer or an affiliate compromises the concept that a buyer can function anonymously and provides information about the business of the broker's broker. The Proposed Rule would serve to compromise the anonymity enjoyed in the municipal securities market and would be a negative development for a market that has always provided participants ways to protect their identities.

In addition, the presumption set forth in Proposed Rule G-43(a)(iii) that a broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted for municipal securities unless both seller and bidders agree otherwise in writing in advance of the bid-wanted will do nothing to encourage or even maintain liquidity in the secondary market for municipal securities. This presumption may in fact discourage potential buyers from bidding and reduce liquidity in the municipal securities market. This is inconsistent with the MSRB's stated goals of maintaining liquidity in the secondary market for municipal securities and of particular concern to BDA members.

Furthermore, the record-keeping requirements imposed by Rule G-8 under the Proposed Rule are burdensome. A broker's broker and especially an alternative trading system may receive thousands of bid-wanted and offerings daily. The pricing on the offerings is frequently changing due to such things as fluctuating market conditions, changes to a trader's net overall exposure, or a management decision to increase or decrease risk. In the taxable municipal market, which increased significantly with the issuance of Build America Bonds, dealers regularly post offerings that change whenever the U.S. Treasury taxable benchmark price changes, and such offering prices can change several times per minute. Requiring brokers' brokers to document price changes would be a huge, costly undertaking providing little to no benefit to the market because the market participants already know that such offering prices are always subject to change and the broker's brokers have little influence on such offering price fluctuations.

Finally, BDA believes that the Proposed Rule's use of pre-defined pricing parameters continues to suffer from a conceptual problem that existed in the earlier proposal. Namely, that a broker's broker must, in effect, determine what is a fair price or, 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 Proposed Rule is applied to alternative trading systems who do not qualify for the exemption. Any determination of what is the range of fair prices will necessarily have to be based on historical data. In a volatile market, trades could easily exceed those historical parameters which would necessitate contact by the alternative trading system with either bidders or sellers. Alternative trading systems receive several thousand bid-wanted a day. If an alternative trading system received 2500 bid-wanted (not an uncommon volume) and in a volatile market five percent exceeded the pre-defined pricing parameters, assuming five minutes each to make the contacts, it would take more than ten hours to complete the contacts required by the Proposed Rule. It also remains the case that if a broker's broker sets the pricing

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 pricing 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.

BDA continues to believe that this rule is not necessary and creates a benefit that is disproportionate to the burdens it creates. The behaviors that the Proposed Rule are intended to address are already prohibited by other MSRB rules. The information that we have from our members is that, to the extent there has been improper behavior, the enforcement actions taken under the 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 behavior, then FINRA 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 problems with practical operation of the parameters as noted above and the uncertainty created by the the exception from the definition of broker's brokers for certain alternative trading systems.

In view of the foregoing, BDA respectfully requests that the Commission disapprove the Proposed Rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Nicholas".

Michael Nicholas
CEO