This document is scheduled to be published in the
Federal Register on 03/26/2012 and available online at
http://federalregister.gov/a/2012-07133, and on **FDsys.gov**

8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66625; File No. SR-MSRB-2012-04)

March 20, 2012

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

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

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

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

---

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

2 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

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

"Transaction Chains"

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

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

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

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

---

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

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

Summary of Proposed Rule G-43

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

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

---

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

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

Proposed Rule G-43(b) would create a safe harbor. The safe harbor would provide that a broker's broker that conducted bid-wanteds in the manner described in Proposed Rule G-43(b) would satisfy its pricing duty under Proposed Rule G-43(a)(i).[7] The provisions of the safe harbor are designed to increase the likelihood that the highest bid in the bid-wanted is fair and reasonable.

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

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

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

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

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

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

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

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

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

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

Summary of Proposed Amendments

The proposed amendments to Rule G-8 would require recordkeeping designed to assist in the enforcement of Proposed Rule G-43. Records would be required to be kept of bids, offers,

---

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

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

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

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

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

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

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

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

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

Summary of Proposed Notice

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

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

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

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

2. Statutory Basis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Solicitation of Comments

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

Electronic comments:

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

Paper comments:

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

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

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2012-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-7133 Filed 03/23/2012 at 8:45 am; Publication Date: 03/26/2012]

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