November 22, 2010

Ms. Peg Henry
Deputy General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2010-35:

Dear Ms. Henry:

Hartfield, Titus & Donnelly, LLC ("Hartfield") appreciates this opportunity to submit comments on the Municipal Securities Rulemaking Board's ("MSRB") Notice 2010-35: Request for Comment on MSRB Guidance on Municipal Securities Broker's Brokers (the "Notice"). Hartfield also participated in the drafting of the comment letter on the Notice submitted by the Securities Industry and Financial Markets Association ("SIFMA") (the "SIFMA Letter"), and we support the views expressed therein. However, given the substantial risks that we believe that certain aspects of the Notice pose to the efficient operation of the municipal securities secondary market (the "Market"), we felt compelled to submit these additional comments.

Agent versus Principal

We believe that the SIFMA Letter correctly characterizes the Notice's treatment of whether transactions are effected on a principal or agency basis as elevating form over substance, for the reasons identified therein. The Notice appears to characterize as a principal transaction any transaction in which anonymity is maintained. It is true that for all MSBB trades (consisting of matched buy and sell transactions) the dealers involved do not settle directly with each other as principal. However, this is only done to ensure that the dealer-required anonymity is maintained. The only other alternative would be to give up the dealer's names to each other and the dealers do not want this. The Notice's interpretation then takes this form of settlement and applies it to the substance of how trades are effected. This is an inappropriate reason for the new interpretation of the application of MSRB Rules. As a further note, the vast majority of MSBB trades are effected without securities moving through an MSBB's clearing accounts. Some MSBBs clear on a fully disclosed basis and their agent is principal to both sides of a trade. Others, Hartfield included, net a vast majority of their trades through the National Securities Clearing Corporation ("NSCC") and NSCC is the principal to both sides of the trade. Thus, very few

securities are held, even for settlement purposes, in an account of an MSBB, yet, under the Notice, all transactions would be deemed to be principal transactions.[1]

We believe that the Notice's analytical framework described above ignores the "special relationship" between MSBBs and their dealer counterparties that is clearly acknowledged in Rule G-18. MSBBs work at the direction of their dealer-counterparties, effectively as an extension of their trading desks. MSBBs conduct their bid wanteds and other activities on behalf of dealer counterparties entirely within the parameters determined by the dealer (so long as such parameters do not violate any rules or standards of conduct). The most fundamental of these parameters is that all parties to a transaction with an MSBB demand that their anonymity be maintained. This anonymity allows both sellers and bidders to deal openly with the MSBB, and the Market to function efficiently.

We agree with the SIFMA Letter that the functional role that a party plays in a transaction should determine its regulatory treatment, and that principal transactions should be determined on the basis of those functions traditionally associated with principal trading: the maintenance of a proprietary inventory and the related ability to set the price for security transactions. We point out that MSBBs broker municipal securities and do not function in a manner traditionally understood to be principal trading.

Rule G-18

Currently Rule G-18 treats MSBB dealer transactions in the same manner as dealer agency transactions with customers. For the reasons stated in the SIFMA Letter, we believe that this treatment is appropriate and should be maintained. MSBB dealer transactions are the functional equivalent of dealer agency transactions. We are concerned that the same analytical flaw described above underlies the Notice's proposal to subject MSBB dealer transactions to a higher standard than are dealer agency transactions with customers. Currently, dealers are held to a reasonable efforts standard in agency transactions with customers, as are MSBBs in their dealer transactions. The Notice elevates the MSBBs' standard to a higher standard of determining whether a given price is fair and reasonable, which elevates certain interdealer transactions to a higher standard than dealer transactions with customers.

We believe that the Notice's proposed revision of Rule G-18 is the practical equivalent of subjecting MSBB dealer transactions to Rule G-30, even though the wording of the two standards would remain distinct. Rule G-30 prohibits transactions unless a determination can be made that the price is fair and reasonable. The revised Rule G-18 would require an MSBB to make that determination and give notice to a dealer in cases where it is unable to conclude that a high bid was fair and reasonable. In effect, the MSBB is being required to implicitly endorse the fairness and reasonableness of every high bid it receives in cases where it does not send the notice to the dealer. This is not required of a dealer when acting as agent for a customer, regardless of the form of settlement.

In addition to the MSBB's new obligations described directly above, the dealer, in order to proceed with the trade, must respond **in writing** that they understand the determination made and that

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[1] We note that in the current settlement environment, dealers generally maintain customer securities in the dealer's account (for benefit of its customers (the "FBO Account")) at The Depository Trust Company ("DTC"). When a dealer transacts "as agent" for a customer, the securities are delivered out of the FBO Account to the dealer's "proprietary" account at DTC, and are delivered to/from the dealer's proprietary account. Thus, the delivering/receiving counterparty knows the dealer as the principal counterparty in the transaction. Thus, the Notice's interpretation of a principal transaction could just as well apply to a dealer's agency transaction for a customer.

they want to sell anyway. We believe that this notice and acknowledgement procedure is the practical equivalent of simply prohibiting such transactions. This will be an impediment to liquidity in the Market.

As an alternative to the higher fair price standard and the proposed written notice procedure, we suggest that we inform the dealer if we have reason to believe that a bid is either above or below certain parameters which we would establish for this purpose, and disclose to dealers. Then we would follow the dealer's directions on the actions to take. We would keep as part of our documentation of the transaction a notation of the analysis and communication. For the reasons set forth in the SIFMA Letter, we believe that dealers are in vastly superior positions to make final fair price determinations, and since we work for the dealer, we should remain under the current Rule G-18 requirement of having no reason to believe that a price is not fair.

We also request, should the MSRB decide to move forward with this amendment to Rule G-18, that the rationale for not subjecting dealer agency transactions with customers to Rule G-30 also be explained. Traditionally, dealers' agency transactions with customers are functionally equivalent to MSBB transactions with dealers (hence the similar treatment under Rule G-18) because neither the dealer nor the MSBB trades from inventory in these cases, and they do not determine the sale or purchase price. We believe MSRB should explain why dealers are in need of protections greater than those afforded to customers (including retail customers).

Rule G-17

Hartfield agrees with the Notice, and the SIFMA Letter, that MSBBs are subject to Rule G-17 in the conduct of their municipal securities business, and Hartfield takes these obligations very seriously. However, we also agree with the SIFMA Letter that broad limitations or prohibitions on communications with trading counterparties are fraught with risk. The role of the MSBB is to facilitate liquidity and the efficient functioning of the Market. We feel that the dissemination of market information, in a manner consistent with maintaining anonymity, is an appropriate communication with dealers. This information may be regarding suspected erroneous bids, whether high or low, or their position in the bidding process. (Information on position in the bidding process will allow them to deploy their capital elsewhere. This is an indispensible part of the bid-wanted process which encourages a dealer to place bids on other items.) Our alternative here is the same as to the Notice's G-18 guidance; allow the MSBB to maintain documentation of the analysis of the bid and conversation with its counterparty in these instances.

Hartfield also is extremely concerned about the Board's suggested "conflicted of interest" and its potential for bifurcation of the market, dealer vs. customer, that may result from the Notice's proposed restrictions on communications with MSBB's non-dealer trading counterparties, which are limited to institutional investors and Sophisticated Municipal Market Professionals ("SMMP"). As stated in the SIFMA Letter, we also believe that these Market participants should not be prohibited from receiving information (again in a manner consistent with anonymity) about what similar securities have recently traded for, or at what price they may be currently bid. This type of information allows these Market participants to make more informed buy/sell decisions. Should such restrictions be deemed necessary by the MSRB, we do not understand why they would not apply to all participants in the Market, thereby prohibiting all Market professionals (dealers, banks, Municipal Securities Dealers and MSBBs) from sharing this information with non-dealer Market participants.

We believe that these communications should continue to be judged under Rule G-17, and communications that have the effect of manipulating the market should be sanctioned accordingly. However, since Market information is as important to institutional investors and SMMPs as it is to dealers, we recommend that no differentiation be placed on which Market participants receive Market

information. This will prevent disenfranchising the non-dealer segment of the Market and provide for the uniform distribution of information in the Market.

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We thank you again for the opportunity to comment on this important matter.

Sincerely,

Mark J. Epstein
President