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November 3, 2011

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

Re: MSRB Notice 2011-50:

Dear Mr. Smith:

Hartfield, Titus & Donnelly, LLC (“HTD”) appreciates this opportunity to submit comments on the Municipal Securities Rulemaking Board’s (“Board”) Notice 2011-50¹ (the “Notice”) in which the Board requests comment on revised draft Rule G-43, and associated revised draft amendments to Rules G-8, G-9 regarding municipal securities broker’s brokers (“MSBBs”) and draft interpretive notice on the obligations of dealers that use the services of broker’s brokers. HTD also is participating in the drafting of the comment letter on the revised draft to be submitted by the Securities Industry and Financial Markets Association (“SIFMA”) (the “SIFMA Letter”), and supports the views expressed therein.

We would like to take this opportunity to thank the Board for its revision of Draft Rule G-43 and for taking all of the comments received into consideration when making its revisions. HTD feels that this new draft proposal, with a few modifications, will define the responsibilities and methodologies of a broker’s broker in municipal securities (MSBB) in the secondary market. This should significantly assist the SEC and FINRA in applying “risk based” principals to future Periodic Compliance Examinations, thus limiting their time for examination by limiting the Rules and Regulations that need to be included in the exam; such as Rules G-22(b), G-25(b) & (c), G-26, and others. It also shows that MSBBs perform an important role by providing liquidity, efficiency, anonymity and information flow for the dealer community and their Customers. With that being said, there are still certain aspects of the proposed rule that need to be considered for revision. The Board will find our concerns in the following paragraphs. They are divided into 3 categories: Offerings; Bid Wanted; and dealing with Customers.

Jersey City Chicago Dallas Oak Lawn Boca Raton San Francisco Atlanta

¹ MSRB Notice 2011-50 (Sept. 8, 2011).

OFFERINGS

We would like to start with our concerns on Offerings and the requirements of Rule G-43, sections (a)(iii), (b)(i), (b)(iv), (b)(v), (c)(i)(F); and, Rule G-8(a)(xxv)(A) and (F). The Offering process is distinctly different from a Bid Wanted auction. In the Offering process, also known as "Situation" brokering, the seller provides a list of securities that they, or their Customers, want to sell and the price at which they would be willing to sell. Many times, there are dealers who have expressed an interest in these or similar securities and a price at which they would be willing to buy. Thus, we have a situation where one dealer would like to sell a security at one price and one or more dealers would like to purchase the security at another price. When the buyer indicates to our broker the price it will pay to purchase the security, our broker will then call the seller of the security and inform them of the price the buyer will pay. At this point, a price negotiation typically occurs and if a mutually acceptable price is agreed upon, including our commission, the TRADE (buy and sell) is executed.

This could be compared to a stock on NASDAQ or the Over-the-Counter Bulletin Board (OTCBB). Sellers show the price and size at which they are willing to sell and buyers show the price and size at which they are willing to buy. NASDAQ displays three levels of information on a stock depending on a person's entitlement. The three Levels are: 1) "best quote" price and round lot size (lowest offer/highest bid); 2) the "best quote" price with actual size by firms (firms not disclosed); and, 3) the full "book". The "book" is all the bids and offerings, price and size, on the security. Quite similarly we may have multiple offers and bids on a very active security and display them to any interested party.

SECTION (a)(iii) - (*Work on Behalf of the Seller*) - Offerings are displayed, discussed and negotiated in a manner similar to an Over-the-Counter stock. An MSBB works for either the seller or buyer in the negotiation, depending on which side initiates the negotiation. Many times there are multiple buyers and multiple sellers making markets in the same security. Thus, the MSBBs activity is not consistent with the requirements of section (a)(iii), i.e., to only work for the seller unless agreed to otherwise. We work for either side depending upon the circumstances. We suggest restricting this section to apply only to Bid Wanted.

SECTION (b)(i) - (*Wide Distribution*) - We distribute lists of Offerings through our electronic platform, HTDonline.com, and our network of regional offices via telephonic communications. Through our knowledge, which is gained from experience, and our historical information, we telephonically contact dealers with potential interest. This does not necessarily include the underwriter of the issue. Since unlike Bid Wanted which are usually given to one MSBB, Offerings are displayed by dealers on many systems and through many MSBBs. Thus the requirement for widely disseminating an Offering is not necessary. Also, unlike Bid Wanted where we have an obligation to find the buyer, there is no such obligation for an Offering. If any such an obligation does exist, it is with the seller. We suggest restricting this section to apply only to Bid Wanted.

SECTION (b)(iv) (previously Rule G-43(c)(iv)) - (*Information to Bidders*) - Because municipal Offerings are so much like Over-the-Counter stock "offerings", they are traded through negotiation rather than an auction. As stated above, NASDAQ displays three levels of information on a stock depending on a person's entitlement. In these Levels, the "book" may be seen on an issue. Therefore, all offers and all bids, with size, may be seen. The same should continue to apply to municipal Offerings. Bidders need to know if other Offerings exist (the depth on the sell side) and sellers need to know the other bids that exist (the "depth" on the buy side). Currently, on our website, we have a page just for this purpose. It is called our "Markets" page and a copy of one is attached. We suggest restricting this section to apply only to Bid Wanted.

SECTION (b)(v) - (*Bidding Deadline*) - Considering current industry practice covered in all the discussions above, it can be seen that there are no time limits on Offerings. The negotiations may continue all day and into other days. It is a function of the market. This section should apply only to Bid Wantedes and not to Offerings.

SECTION (c)(i)(F) - (*Offer and Bid Price Disclosure*) – Again, considering all the above discussions, we hope that the conclusion can be drawn that offer and bid information on Offerings should be made available to interested parties throughout the negotiation process. Consequently, the restrictions of this section should only be applicable to Bid Wantedes.

Rule G-8(a)(xxv)(A) - (*Time of Receipt of Offer*) – Unlike in the NASDAQ market, the preponderance of negotiations on municipal Offerings are performed through “voice brokering”. Generally, the only technology in voice brokering is the telephone. Sometimes a broker may have a buyer on one phone and the seller on another. During the ensuing conversations, both the bid and offer price may change many times. It is practically impossible to record these fast multiple changes. In current industry practice, Offerings are generally provided to an MSBB at the beginning of the trading day. Thus we do know the time when an Offering size and price are first given to us and both are recorded in our system. Subsequently, whenever we update an Offering for display in our system, we also record the time, size and price. Our compliance with this Rule would not interfere with industry practice if the time and price record was limited to when we first received the Offering, it is updated for display or distribution, and we were restricted to displaying the offering as it was given to us, or updated, by the seller.

Rule G-8(a)(xxv)(F) - (*Reason for Offering Change*) – As stated in our discussion on Rule G-8(a)(xxv)(A) Offerings are negotiated primarily through voice brokering and the price changes may be fast pace. This could also happen on NASDAQ stocks when negotiations are taking place over the phone and the final price change is posted only when negotiations are completed. In the negotiation the buyer or seller would only change their price for the purpose of executing a trade. At other times, particularly in the morning, sellers have many reasons for changing their Offering price and it is confidential to them. Their reasoning does not change their responsibility for the Offering being bona fide nor have any bearing on the operation of the secondary market or our displaying the Offering as they gave it to us. In Bid Wantedes, recording bid price changes is practical because it is a much slower paced process and bids are recorded by the MSBB when received.

In addition, there are instances where electronically displayed Offerings are priced based on a spread to U.S. Treasury securities. Thus, the Offering price is continually changing. As the U.S. Treasury prices change the Offering prices will change as well.

Also, a dealer might change the price on an Offering throughout the course of the day because some or all of the bonds trade, the market changes, additional bonds were purchased, different bonds were added to inventory and they want to liquidate the Offering, etc.. All of this is dealer determined and often we are not informed of the price changes or the Offering’s status until the next day. When we are informed, the dealer will not necessarily want us to know their reasoning.

We suggest that if any record is to be kept on Offerings, in addition to the trader and broker involved, it is the time when we record or update the Offering for distribution, not during negotiation and that there be no requirement to record the reason.

BID WANTED

SECTION (b)(iv) - (*Comment to Bidder on Where They Stand*) - We would like to reiterate and state for the record that we agree with the proposed Rule's restriction on giving preferential information to bidders such as "last looks", directions on what to bid, suggestions on lowering a bid or raising a bid.

However, we feel a bidder is entitled to know if their bid is currently the high bid ("Comment") at anytime and not just when the bidding has ended. This will allow bidders, who do not have the high bid, to deploy their capital elsewhere and/or place bids on other items. The dealer community has always felt this information is important to their efficient use of capital. In addition, this assists in improving liquidity in the market. Current industry practice is to give a bidder "Comment" on whether or not their bid is currently the high bid. They are not told their position among the bids or how much they are away from the high bid. Once we do this, they are not allowed to modify their bid or place another bid on the item. Note: this is essentially their deadline for their bidding on this item.

Thus, we suggest that MSBBs 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.

SECTION (b)(v) - (*Bidding Deadline*) - During the bid wanted process for "sharp time" there is a deadline by which all bids must be received. That is the "sharp" time. For an "around time" item, the current Draft suggests the deadline to be the time a bid is "Put Up" to the seller. For purposes of this Rule, there are current industry practices which would suggest that a better time for the "around time" item's bidding deadline would be when the seller gives the final instructions to an MSBB to sell the bonds, i.e., when the bonds are marked "For Sale".

The reason for this is the seller may come to us at any time during the bidding process and ask us for the current high bid. This may only be for information purposes for them or their customer and not necessarily for determining if the bonds are for sale at that bid. Anytime we tell a seller the high bid, we mark the bid as "Put Up", even though the seller is still accepting bids. Another instance is when the seller may tell us that the bonds are for sale at the "Put Up" bid or higher. Here the seller is notifying us that the bonds will trade and to get a higher bid if possible. We will still continue to work the item until the seller directs us otherwise. Thus, again we are still taking bids after the "Put Up" time.

When a seller clearly indicates that we are to sell the bonds, we mark them "For Sale" and go to the high bidder and sell them the bonds. Thus, we suggest the deadline for accepting bids on an "around time" item be when the bonds are marked "FOR SALE".

SECTION (b)(vi) - (*Informing Seller of any Bid Change*) - We agree that receiving permission from a the seller in certain cases to change a bid is appropriate. However, there is no benefit to the market to inform the seller of bid changes in all events and in some instances it only delays the process. In our system, HTDonline.com, not only are bids changed by our brokers (at a bidder's direction) but a bidder can change their own bid. Rather than have it be a requirement to always inform the seller of bid changes, the requirement should only apply to an MSBB who falls under section (c)(i)(I) of the Rule. For an MSBB using Section. (b)(vi), it is already known by the seller and bidders that bids may be changed if they fall outside certain parameters.

Therefore we suggest that an MSBB who does not conduct Bid Wanted as provided in Section (b) be required to notify sellers of bid changes at all times. For MSBBs who comply with Section (b), they should only be required to inform a seller if the seller requests the information. This will assist in keeping efficiency in the market.

SECTION (c)(i)(F) - (*When a Bid Wanted is Completed*) - We also suggest 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).

CUSTOMERS

SECTION (c)(i)(G) - (*Disclosing if a Customer is a Counterparty*) – We provide to our counterparties a statement of who we are and disclose to them that the counterparties to our trades are dealers and SMMPs. Thus, we disclose to sellers and bidders that we have Customers, albeit SMMPs. We feel disclosure of this fact is acceptable, reasonable and sufficient.

However, we are at a loss in understanding the benefit provided to the secondary market by the disclosure on a transaction-by-transaction basis of a Customer as a counterparty. If the disclosure is to be made after the trade is completed, then it is just for information purposes and the counterparty can be identified as a Customer within 15 minutes of execution through the MSRB’s RTTM trade information.

If the disclosure is to be made prior to trade, it implies there is some reason a dealer would not want a Customer on the other side of our trade and could use this as a reason not to sell. However, dealers buy and sell to Customers all the time. If the concern is that the Customer might renege on the trade (because it is not required to follow MSRB Rules), this is of no more concern than if a dealer reneges. Yes, they must follow the Rules; however, they may interpret the Rules in such a way that may justify their stepping away from a trade. It has happened many times among dealers.

By definition and obligation, an MSBB stays in a trade between a buyer and seller to protect both sides of a trade, not only their anonymity, but their credit exposure. Neither side has to worry about the capitalization of the other. Once a dealer has reviewed the MSBB’s financials and determined to broker with that MSBB, trading is no longer a credit issue. We act as riskless principal in all our transactions, and as principal our credit does not fluctuate based on our counterparties nor does “counterparty risk” change based upon who we broker with. The only credit exposure our counterparties face is us, not the other counterparty to the trade.

When dealing with Customers, we are required to follow the same Net Capital Rule as all dealers, and we follow the same formula they do in determining our Minimum Net Capital. Additionally, we have the same requirements as dealers for the DTCC Clearing Fund Deposits for clearance and settlement purposes. DTCC makes no distinction between our dealing with a Customer or another dealer. They require no additional Clearing Fund Deposit whether we broker with a Customer or a dealer. In addition, the current high percentage of netting of municipal transactions significantly reduces counterparty risk, because DTCC guaranties the transactions.

We provide anonymity in our brokering services and that is a very important function in our service. Part of the anonymity is the full protection of the identity of the counterparties. Just as a dealer would not want us to disclose any information on their identity, the same should apply to Customers. As a matter of fact, the Customers may be using an MSBB just for that purpose. This requirement for disclosure may even be an impediment to the market.

Mr. Ronald W. Smith
November 3, 2011
Page 6

We ask that generally disclosing that we broker with Customers would be a sufficient way to inform our clients instead of telling them on a transaction-by-transaction basis. This general statement would help us in keeping anonymity in our brokering services while informing our clients that we also broker with Sophisticated Municipal Market Professional.

We thank the Board for giving us this opportunity to share our views on the Proposed Rule G-43 and if we could be of further assistance please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark J. Epstein", with a long horizontal flourish extending to the right.

Mark J. Epstein
President & CEO

Attachment

ATTACHMENT

"Markets"

HTDOnline Offering information - Windows Internet Explorer

http://192.168.100.55/htdonline/secure/ODetail/frames.html?detail[/htdonline/cgi-bin/OModifyTrader.csh?rows=1&

Print Refresh Close SIFMA History Calculator New Bid New Offer Submit

SETTLE
11/09/2011

010869EC5 ALAMEDA CORRIDOR TRANSN AUTH CA RFDG-SUB- 0.000 10/01/2012
B [AMBAC] [TXBL] [N/C] [B/E] [OY: 5.170] ST CA

MDY BAA2 / BAA2 S&P A- / A- FITCH BBB+ / BBB+ SMITH'S NR DTD 05/06/2004

INSUR AMBAC Prospectus

UND: GOLDMAN, SACHS & CO. ISSUE: \$686,024 MATURITY: \$21,721

	AMOUNT	MINIMUM	INCREMENT	LEAVE	YIELD	CONC	PRICE
OFFER	2000	5	5	0	4.112		96.425

STANDARD & POOR'S Price: 95.211 Yield: 5.460 THOMSON REUTERS EVALUATION Price: 93.892 Yield: 5.798 Bloomberg (BVAL) Price: 94.776 Yield: 4.925 Score: 2

BID						OFFER					
AMT	YIELD	CONC	PRICE	SPREAD	S/D	AMT	YIELD	CONC	PRICE	SPREAD	S/D
500 ▲	4.319		96.250	SA	11/09	2000 ▲	4.112		96.425	SA	11/09
250 ▲	4.468		96.125	SA	11/09	5000 ▲	3.435		97.000	SA	11/09
						3000	2.271		98.000	SA	11/09

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