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April 16, 2012

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: Comments on MSRB Rule Proposal on Regulation of Broker's
Brokers (File Number SR-MSRB-2012-04)**

Dear Ms. Murphy:

Advisors Asset Management, Inc. ("AAM") is pleased to be afforded the opportunity to offer comments to the Securities and Exchange Commission (the "SEC") on File Number SR-MSRB-2012-04 regarding Municipal Securities Rulemaking Board ("MSRB") rule proposals on the regulation of broker's brokers. AAM is a broker-dealer registered under the Securities and Exchange Act of 1934, a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") and a MSRB registrant.

As a preliminary matter, AAM questions the need for and purpose of proposed MSRB Rule G-43 and reiterates comments previously made by the Securities Industry and Financial Markets Association ("SIFMA") and other commenters in response to previous MSRB requests for comments regarding the regulation of municipal securities broker's brokers, draft Rule G-43 and associated amendments to Rules G-8, G-9 and G-18¹. AAM believes the proposed rule changes do not serve their intended purpose. In MSRB Notice 2011-18, the MSRB cited several SEC and FINRA enforcement actions against broker's brokers for activity that constituted "clear violations of MSRB rules" as grounds for additional guidance and/or rulemaking concerning activities of broker's brokers. Thus, existing rules provided ample grounds for the SEC and

¹ See MSRB Notice 2010-35 (Sept. 9, 2010) and comments thereto; MSRB Notice 2011-18 (Feb. 24, 2011) and comments thereto; and MSRB Notice 2011-50 (Sept. 8, 2011) and comments thereto. For representative comments reflecting the perspective of retail brokers, see letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated April 29, 2011, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-18/SIFMA-1.ashx>. For representative comments reflecting the perspective of municipal securities broker's brokers, see letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated April 29, 2011, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-18/SIFMA-2.ashx> (the "SIFMA MSBB Letter").

FINRA to discover and sanction broker's brokers for misconduct yet, notwithstanding the effectiveness of existing rules, the MSRB proposes *additional* rules that apparently address the same issues. AAM believes that the prior enforcement actions demonstrate that the existing regulatory scheme is working and that there is no need for additional rulemaking. The market would be better served by regulatory authorities focusing on efforts in monitoring and enforcing current rules rather than adopting the new regulations that will likely have unintended consequences for municipal bond market participants.

Proposed MSRB Rule G-43(d)(iii) defines "broker's broker" as 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". Retail brokers, broker's brokers and other market participants have overwhelmingly objected to this definition in prior comments to the MSRB as being extraordinarily broad, ambiguous and not accurately defining what a broker's broker is.² The overly broad nature of this definition gives broker-dealers participating in the municipal bond market almost no ability to determine whether they fall within the scope of proposed Rule G-43. In fact, the proposed definition is not even consistent with the definition of a broker's broker in the MSRB's own Glossary of Municipal Securities Terms:

BROKER'S BROKER—A broker-dealer that executes securities transactions exclusively with other broker-dealers and not with public investors. Broker's brokers generally do not take inventory positions in securities. A broker's broker engaged in the business of effecting trades in municipal securities is known as a "municipal securities broker's broker" or, colloquially, a "municipal securities broker."³

A broker's broker plays a uniquely limited role in execution of transactions as agent for other broker-dealers. Broker's brokers execute transactions on an agency basis or, in some cases, in a riskless principal capacity. Broker's brokers do not engage in proprietary trading or take inventory positions in securities. However, the proposed broker's broker definition does not appear to incorporate this critical aspect of a broker's broker business. AAM appreciates that the MSRB has attempted to respond to some of the objections to the definition raised in previous comment letters, however, the definition continues to be inaccurate and overly ambiguous. For example, as to the issue of proprietary trading, proposed Rule G-43(c)(i)(H) would require that a

² See, e.g., letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated November 15, 2010, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/~media/Files/RFC/2010/2010-35/SIFMA.ashx> (the "November 2010 SIFMA Letter") and the SIFMA MSBB Letter reiterating this view; letter from O. Gene Hurst, President, Wolfe & Hurst Bond Brokers, Inc., to Ronald W. Smith, Corporate Secretary, MSRB, dated April 25, 2011, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-18/Hurst-2.ashx>; and letter from Paige W. Pierce, President & CEO, RW Smith & Associates, Inc., to Ronald W. Smith, Corporate Secretary, MSRB, dated April 27, 2011, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-18/Pierce-RWSmith.ashx>.

³ See http://msrb.org/msrb1/glossary/view_def.asp?param=BROKERSBROKER (accessed April 16, 2012).

broker's broker adopt policies and procedures that "prohibit the broker's broker from maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes". While this prohibition might be consistent with the business of a traditional broker's broker, it is unworkable in light of the overly broad "broker's broker" definition in proposed Rule G-43(d)(iii). As the rule is currently written, a broker-dealer that has historically participated in new issue syndicates and engaged in proprietary trading of securities could be inappropriately covered by the broker's broker definition and then be forced to exit those portions of its business. Eliminating firms from the municipal securities market would damage market liquidity and be harmful to retail brokers and investors. This cannot be the intent of the rule but would appear to be a direct unintended consequence of the rule as currently written.

A more focused and accurate broker's broker definition would avoid these issues and enhance the ability of market participants to identify and comply with regulatory obligations. In a November 15, 2010 letter to the MSRB, SIFMA proposed an alternate definition that focused on the key aspects of the limited nature of the business of a municipal securities broker's broker.⁴ Specifically, SIFMA proposed that the term "broker's broker" be defined to mean a broker, dealer or municipal securities dealer that:

- a) acts as a disclosed agent or riskless principal in the purchase or sale of municipal securities for an undisclosed registered broker, dealer, municipal securities dealer, Sophisticated Municipal Market Professionals ("SMMP"), or institutional counterparty;
- b) does not have or maintain any municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;
- c) executes equally matched transactions contemporaneously;
- d) does not carry any customer accounts; does not at any time receive or hold customer funds or safekeep customer securities;
- e) does not participate in syndicates;
- f) acts in the limited agency capacity of providing liquidity, market information, order matching, and anonymity through the facilitation of transactions in the interdealer market;
- g) does not participate in the decision to buy or sell securities, exercise discretion as to the price at which a transaction is executed, or determine the timing of execution; and
- h) is compensated by a commission, not a mark-up.

This functional definition focuses on the key characteristics of a broker's broker as well understood by market participants while also giving all broker-dealers the ability to determine whether they and their trading counterparties fall within the broker's broker definition.

The MSRB has suggested that the SIFMA definition would allow "a firm to escape classification as a broker's broker and, accordingly, avoid application of the rules for broker's brokers". AAM joins SIFMA and other past commenters in rejecting this view. We believe that

⁴ See the November 2010 SIFMA Letter and the SIFMA MSBB Letter reiterating this view.

it is highly unlikely that broker-dealers will engage in contortions of their businesses merely to avoid falling within this definition. At minimum, if the SEC ultimately determines that adopting a broker's broker rule is appropriate, AAM strongly encourages the adoption of a more specific and comprehensive definition that promotes the transparency and clarity sought by the MSRB. In particular, if the SIFMA definition is deemed to be too restrictive, the definition should at least be revised to exclude firms from the definition if they maintain municipal securities in proprietary or other accounts, other than for clearance and settlement purposes. This would focus the definition on the key role of a broker's broker as an *agent* for retail brokers. Such a definition would also be consistent with both the widely-accepted understanding of a "broker's broker" and the definition as it currently appears in the MSRB's own Glossary of Municipal Securities Terms.

An additional problematic element of the proposed MSRB definition as currently written is the inclusion of the phrase "or holds itself out as a broker's broker". The MSRB has supported this language on the grounds that the burden should not be on a selling dealer to know whether a firm holding itself out as a broker's broker, in fact, principally effects trades for other dealers (*i.e.*, interpret the first part of the proposed definition). The MSRB position seems to implicitly acknowledge that the basic definition is unduly broad and overly ambiguous, such that dealers will be unable to interpret the first part of the definition. In addition, the MSRB has not provided any guidance relating to the interpretation of the ambiguous "holding out" phrase or how a firm might be deemed to "hold itself out as a broker's broker". Accordingly, we respectfully question how either party to a transaction could sufficiently determine whether the other party might be a broker's broker for purposes of the proposed rule. It is our view that this element of the definition is insufficiently defined and will contribute to the definition's lack of clarity making it substantially difficult to implement.

AAM reaffirms the position stated by SIFMA and others in previous comments on this issue that a function-based definition is appropriate and would allow any rules governing broker's broker conduct to be appropriately tailored to the uniquely limited nature of municipal securities broker's broker activities. SIFMA's proposed definition aligns more accurately to the widely-accepted definition of a broker's broker as understood by market participants for many years. AAM recognizes that in response to SIFMA's proposal, the MSRB incorporated certain of these suggested definitional elements into policies and procedures required of all broker's brokers. While these policies and procedures may be appropriate for actual broker's brokers, because the definition of "broker's broker" is unduly broad, we believe that implementing these as policy requirements may result in a large number of firms having their activities restricted in a manner that would adversely impact liquidity for retail customers in the municipal securities market.

In the event that the SEC determines to approve the proposed rule with the broker's broker definition in its current form, AAM respectfully submits that the rule should eliminate the requirement included in proposed Rule G-43(c)(i)(H) regarding maintenance of municipal securities in proprietary accounts. As discussed above, this prohibition is unworkable in light of the overly broad "broker's broker" definition. We believe that elimination of this requirement would not hinder the objectives of the rule because proposed Rule G-43(a)(i) already expressly requires that a broker's broker obtain a price for a dealer that is fair and reasonable in relation to

prevailing market conditions and employ the same care and diligence in doing so as if the transaction were being done for its own account. Maintenance of securities in proprietary accounts does not itself adversely impact that obligation and could even enhance a firm's ability to meet that obligation by providing additional sourcing for municipal bonds. In addition, the proposed rule separately requires a broker's broker to adopt and comply with policies and procedures pertaining to the operation of bid-wanted and offerings for municipal securities. Among other things, these policies and procedures must prohibit self-dealing by a broker's broker under proposed Rule G-43(c)(i)(I). These provisions of the rule provide adequate safeguards against inappropriate conduct without the adverse consequences that would occur as a result of a broad prohibition on proprietary trading paired with an overly broad broker's broker definition. Alternatively, the rule could be modified to require policies and procedures related to proprietary account trading without requiring an absolute prohibition on maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes.

In summary, AAM respectfully requests that the SEC and MSRB:

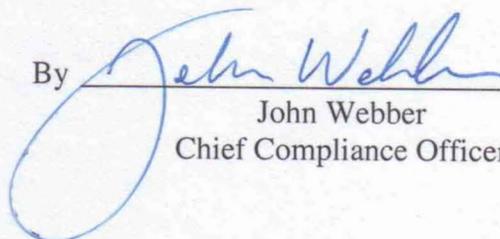
- reconsider the current proposal in light of the fact that existing rules have provided ample grounds for the SEC and FINRA to discover and sanction broker's brokers for misconduct;
- if rule changes are adopted, revise the "broker's broker" definition in Rule G-43(d)(iii) to incorporate the definition proposed by SIFMA in its previous comments;
- as an alternative to the SIFMA definition, revise the "broker's broker" definition to exclude dealers that maintain municipal securities in proprietary or other accounts, other than for clearance and settlement purposes, so that the definition at least focuses on the key nature of a broker's broker;
- eliminate the phrase "or holds itself out as a broker's broker" from the "broker's broker" definition in Rule G-43(d)(iii) to enable all broker-dealers to determine whether a trading counterparty is actually covered by the rule;
- if the broker's broker definition remains in its current form, eliminate proposed Rule G-43(c)(i)(H) that would prohibit a broker's broker maintaining municipal securities in proprietary or other accounts given that a broker's broker would separately have the basic fair pricing obligation under Rule G-43(a)(i) and be required to adopt appropriate policies and procedures under Rule G-43(c).

We appreciate your consideration of the views set forth in this letter and we would be pleased to have the opportunity to discuss these matters further with the SEC staff. Please feel free to contact the undersigned at (210) 630-6333.

Sincerely,

ADVISORS ASSET MANAGEMENT, INC.

By

A handwritten signature in blue ink, appearing to read "John Webber", is written over a horizontal line. The signature is fluid and cursive.

John Webber
Chief Compliance Officer

