

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

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

Dear Ms. Murphy:

RW Smith & Associates, Inc. (“RWS”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) filing of Proposed Rule G-43, and the associated amendments to Rules G-8, G-9, and G-18 regarding municipal securities broker’s brokers.

RWS is a Fixed Income Interdealer Broker that acts as agent or riskless principal, depending upon the contra party, in the purchase and sale of fixed income securities for registered brokers/dealers, dealer banks, Municipal Securities Dealers, Sophisticated Municipal Market Professionals, and institutional customers. Acting in our capacity of interdealer broker (in the municipal market this role is known as that of a “broker’s broker”), RWS does not position securities, execute transactions with retail customers, process or hold customer funds, or safekeep customer securities. As agent, we act in the limited capacity of providing anonymity, information flow, extended distribution, enhanced liquidity to the secondary market, and order matching. RWS does not exercise discretion as to the decision or timing of whether a transaction is executed or not. We are compensated by a transactional commission, rather than a mark-up.

RWS has submitted prior comment letters individually, as well as actively participated in the comment letter process over the past two years with SIFMA, on Proposed Rule G-43. We credit the MSRB and specifically Peg Henry for the extensive work that has been done to craft an appropriate and beneficial rule for the secondary municipal market and its participants. In light of the amount of work done by all in getting the Proposed Rule right, we have only one comment to make and it is in reference to G-43(c)(i)(E) with regard to the disclosure of an institutional customer’s potential role in a transaction with RWS.

In Rule G-43(c)(i)(E), the MSRB proposes requiring broker’s brokers to 1) disclose in writing that the broker’s broker accepts bids from institutional customers or affiliate of the broker’s broker, and 2) disclose to the seller if the high bid in a bid-wanted or offering is from an institutional customer or an affiliate of the broker’s broker.

RWS supports the MSRB’s proposed general disclosure requirement. We feel it is a reasonable request by way of informing market participants of the business practices of the interdealer broker they are electing to execute transactions with and through. RWS currently provides our clients and potential clients information on our website, including who we are, what role we play in the municipal market, and who we are licensed to execute transactions with and on behalf of in the secondary market; specifically broker/dealers, dealer banks, SMMPs and institutions.

RWS supports the MSRB's proposed requirement pertaining to the disclosure of a broker's broker that elects to do business with an affiliate of their firm. We believe the marketplace should be aware of this piece of information so that questions may be asked by potential contra parties regarding confidentiality and fair practices, both in the work environment and over trading platforms. RWS does not do business with its affiliates.

RWS supports the MSRB's proposed requirement pertaining to the disclosure of a high bid on an auction item that has been received from an affiliate of the broker's broker. We feel that whenever there is even the slightest potential of a conflict of interest in the auction process, the best approach is full disclosure to the potential seller. Common ownership that may result in potential access to brokering trading platforms, potential access to information flowing on a brokering desk, etc., these provide potential conflicts of interest between affiliates and, as such, it seems reasonable to RWS that the MSRB would want to require disclosure on this front. The situation market is completely different from the auction market and a bid coming in from an affiliate on an offering cannot be advantaged; the negotiation process is completely different.

RWS does not support the MSRB's proposed requirement that a disclosure be made to the (potential) seller every time an institutional customer is the high bid on a bid-wanted or offering. Fair and equal access to all market participants on secondary market auctions (bid-wanted) and situation trading (offerings) is one of the guiding principles of brokering at RWS. When one dealer is preferred over another in the course of brokering that is an unfair practice and not permitted at RWS. Similarly, when one category of market participant is favored over another in the course of brokering, as would be the case if this proposed requirement is implemented, that is an unfair practice and would not be permitted at RWS. Neither do we agree that a dealer's right to confidentiality and full anonymity is greater than an institutional customer's right to confidentiality and full anonymity.

When a broker's broker acts in its capacity as middleman, traders for selling and buying-clients do not communicate with each other directly. All communications are with and through the broker's broker. Pursuant to industry practice and regulation, the relationship between a client and a broker's broker is a **confidential relationship**. The broker's broker must not disclose the identity of buying- or selling-clients to contra-parties or anyone else, and must not disclose trading strategy information that is given in confidence by client traders. A broker's broker acts as confidential agent on behalf of its clients in the sale and purchase of bonds in order to prevent competing market participants from discerning each other's strategies by monitoring the market activities of market participants or their competitors.

The dealer community does business with the institutional account community and typically is aware of what those accounts own and are interested in buying. By disclosing to a dealer that the high bid on an auction or situation is an institutional account, dealers have the ability to determine the identity of that account. If the institutional account wanted the dealer to know their identity they would not have elected to use the services of a broker's broker. Similar to the reason why a dealer chooses to work with a broker's broker, an institutional account elects to work with a broker for the same advantages of confidentiality, anonymity, market access, information flow, extended distribution, protection of their trading strategies and activities, and efficient execution. The requirement for disclosure would, without

question, be an impediment to an institutional account's ability to access and participate in the secondary market.

S.E.C. Release No. 34-38672 (May 23, 1997), pp. 159, 161, 162, 165, fn. 141, and fn. 143. With 1.1 million separate issues of non-homogeneous municipal securities, each having a combination of unique sets of features, it is the broker's brokers who provide liquidity for municipal securities in the secondary market. Fair and equal access to the secondary market, along with fair and equal rights to confidentiality and anonymity when working with broker's brokers, is an important element of sustainable liquidity and an overall healthy municipal market.

If the MSRB's concern revolves around contra party risk for potential sellers, that risk is nullified by the fact that the broker's broker is the sole contra party on every transaction executed by the broker. The potential seller has already run the broker's broker through their compliance process and has approved them for business; the credit risk is contained to the broker's broker for the potential seller and does not fluctuate based on who RWS's contra party is or what category of market participant they fall into. The only credit exposure our contra parties face is us, not who RWS has on the other side of our trade.

RWS does not see market, transparency, or investor protection rationale in regard to the aforementioned section of the proposed rule. We see no history of enforcement from any of our regulatory bodies that would suggest the need for this disclosure and finally, we believe the passing of this part of the rule would create an impression of inequality to the institutional community with no attendant benefit.

In closing, RWS respectfully requests that MSRB Rule G-43(c)(i)(E) be amended to read:

(E) if a broker's broker allows customers (as defined in Rule D-9) or affiliates (as defined in Rule G-11(a)(x)) to place bids, require the disclosure of that fact to both sellers and bidders in writing and require disclosure to the seller if the high bid in a bid-wanted is from an affiliate of the broker's broker; provided, however, that the broker's broker is not required to disclose the name of the affiliate;

Once again, RW Smith thanks the Securities and Exchange Commission for the opportunity to comment on the MSRB's Proposed Rule G-43.

Best regards,

Paige W. Pierce
President & CEO