



**SIFMA Municipal Division
MSRB Rule G-43 Best Practices
(December 2013)**

MSRB Rule G-43 (G-43) became effective on December 22, 2012. The rule describes some of the duties of a municipal securities broker's broker (MSBB) and certain alternative trading systems (ATS) that are MSBBs for the purposes of this rule. Under G-43, the term broker's broker is defined 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, whether a separate company or part of a larger company. Certain ATS are excepted from the definition of broker's broker, but many ATS are subject to G-43. Additionally, G-43 has an accompanying interpretive notice addressed to dealers that use the services of MSBBs.

G-43 seeks to clarify the role and responsibilities of an MSBB and certain ATS, as well as define the manner in which specific elements of these business models operate, for instance in the case of an auction bid-wanted item that is being handled by an MSBB or certain ATS for a client.

With the implementation of G-43, in addition to the clarification of roles and responsibilities of market participants, the municipal securities industry was presented with changes to the manner by which MSBB and certain ATS intermediaries are permitted to conduct particular procedural aspects of bid wanted auctions. For instance, G-43 amends the process for an MSBB and certain ATS in the following instances:

1. When providing the cover bid to the high bidder at the time of trade execution;
2. When providing bidding information to bidders when the "Firm" time on an auction has elapsed; and
3. When the seller indicates the bid wanted auction item is "For Sale" at present or "Will Trade" upon the completion of the bid gathering process.

G-43(c)(i)(O) states:

"subject to the provisions of sections (b), if applicable, and paragraph (c)(i)(N) of this rule, 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 only receive notice that its bid is the winning bid) with information about bid prices, until the bid-wanted 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."

In order to assure compliance with G-43(c)(i)(O), SIFMA's Municipal Division suggests the following Best Practices for MSBBs and certain ATS if the MSBB or certain ATS desires to disseminate the bid information detailed below:

1. **Providing Cover Bids.** MSBBs and certain ATS may provide the cover bid to the winning bidder at the time of execution if they contemporaneously make bidding information available to the market.
2. **Providing Bid Information On An Item That Is Past Its Firm Time.** On a Sharp/Firm or Around/Firm auction item a bidder is asked to bid the item by the stated time and hold their level until the Firm time has elapsed. There are a multitude of reasons why sellers occasionally cannot complete their internal process by the Firm time. When a seller contacts the MSBB or ATS to inform them they may/will miss the Firm time of their auction, the high bidder is then contacted by the MSBB or ATS who relays the situation and inquires whether or not the bidder will stand by their bid past the Firm time.

While the passing of the Firm time on a bid wanted necessarily moves all bids into the “Subject” column, it does not complete the process; the process is only complete when the MSBB or ATS receives direction from the seller as to a closed or completed status or the high bidder has indicated that they will not stand by their bid. As an active bid wanted, bid pad information is not made available to the market. In addition, bidding information should not be made available to the market unless or until the high bidder indicates it will not stand by its bid and the seller has closed the item.

3. **“For Sale” and “Will Trade” Items.** If a seller directs an MSBB or ATS to sell an auction item (“For Sale” designation), G-43 stipulates the MSBB or ATS is to promptly sell the item to the current high bid in the bid pad. If a seller informs an MSBB or ATS that a bid wanted item “Will Trade” upon the completion of the bidding process, the MSBB or ATS has duties under G-43 to employ the same care and diligence as if the transaction were being done for its own account. Further, the MSBB or ATS is not to take any action that would work against the seller’s interest to receive advantageous pricing. The MSBB or ATS is therefore required to complete the process as requested by the seller and gather bids on the item, until such time that the seller directs the MSBB to sell the bonds.

It is the recommendation of SIFMA’s Municipal Division, that if an MSBB, certain ATS, or inter-dealer broker elects to utilize these Best Practices, the Best Practices should be included in their policies and procedures manual and be disclosed as described in Rule G-43 (c) (ii) (requiring policies and procedures adopted pursuant to Rule G-43 (c)(i) to be disclosed in writing at least annually to sellers of, and bidders for, municipal securities and post such policies and procedures in a prominent position on its website).

Additionally, SIFMA reminds market participants of MSRB guidance related to certain practices in order to preserve the integrity of market prices and the bid wanted auction process as follows:

1. **Selling Dealers Using the Bid-Wanted Process for Price Discovery.** The MSRB has warned Selling Dealers that they should not use the bid wanted process for price discovery. Selling Dealers who use broker’s brokers for price discovery purposes harm the bid-wanted and offering processes by reducing the number of bidders participating, thereby reducing the likelihood that the high bid in a bid-wanted will represent the fair market value of the securities. Depending on the facts and circumstances, the use of bid-wanted solely for price discovery purposes may be an unfair practice within the meaning of Rule G-17. Selling Dealers should be discouraged from placing bid-wanted and offerings with broker’s brokers if they have no intention of selling the securities through the MSBB. The repeated failure of

Selling Dealers to transact at the high bid procured by the MSBB may be indicative of such Selling Dealers using the bid wanted process for price discovery. MSBBs should discontinue doing business with a Selling Dealer if it is determined that the Selling Dealer is using the bid-wanted process for price discovery.

2. **Fair Pricing of Securities.** In support of the MSRB’s request for fair pricing and for the preservation of the integrity of the bid wanted process (in accordance with MSRB Rules G-17, G-30, and G-43), MSBBs may request that Selling Dealers submit competitive bids prior to the close of the bid collection process when the Selling Dealer makes the MSBB aware that it will be in competition with the MSBB. Receiving this information prior to the close of the bid collection process when a Selling Dealer is in competition with a MSBB will help to avoid any appearance of impropriety should the Selling Dealer decide to internalize the bid without executing the sale to the high bidder in the bid wanted.

3. **Fair Dealing in Bid-Wanted Auctions:** MSRB Rule G-17 requires that dealers deal fairly with all persons with whom they conduct municipal securities business. Implicit in this requirement is that dealers do not engage in practices that imperil the integrity of essential market functions such as the bid wanted auction process. Such practices include “pennying up” whereby a Selling Dealer that does not provide a competitive bid prior to the close of the collection process, purchases securities following the bid wanted for their own account at prices that exceed the high bid obtained by the MSBB by a very small amount. This practice may violate MSRB Rule G-17 if the repeated failure of Selling Dealers to transact at the high bid procured by the MSBB is due to the Selling Dealers using the bid-wanted process for price discovery.

Resources:

[MSRB Rule G-43](#)

[Notice to Dealers that Use the Services of Broker’s Brokers](#)