



325 North St. Paul Street
Suite 800
Dallas, Texas 75201-3852

214-953-4191 Direct
800-678-3792 Toll Free
214-840-5034 Fax

Carl Giles
Managing Director

cgiles@firstsw.com

September 10, 2009

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

Re: Notice 2009-47: Request for Comment Regarding Priority of Orders in Primary Offerings

Dear Ms. Henry:

First Southwest Company, notably its municipal syndicate desk, wishes to comment on the Municipal Securities Rulemaking Board's proposed rules regarding the priority of orders in primary offerings and the Board's draft Interpretive Notice on Priority of Orders. As direct market participants in municipal underwriting syndicates as Senior Manager, Co-Manager, or Member, we would like the Board to consider our views on this matter.

In its request for comment, the MSRB stated that its proposals are in response to "...some institutional investors who have told the MSRB that their orders are sometimes not filled in whole or in part during a primary offering, yet the bonds become available shortly thereafter in the secondary market, at higher prices". In the industry, this practice is commonly referred to as "flipping".

In its notice, the MSRB attributes this flipping to two causes: (1) that some retail dealers place orders in retail order periods without having going away orders and (2) that some syndicate members fill orders for themselves, their affiliates or their respective related accounts *before* other orders are filled.



Concerning the first item, FSC believes that requiring every broker, dealer or municipal securities dealer who submits an order to a syndicate to disclose if the order is for its dealer account or a related account will help us fulfill our obligation to issuers, to the syndicate, and to the investing public. Knowing whether the purchaser is a dealer inventory or truly a retail purchaser, FSC will be able to allocate bonds for retail order periods more in accordance with the issuer's wishes and the MSRB's requirement for fair dealing. Please know therefore, that FSC supports the Board's proposed rule changes for Rule G-11, specifically the amendment related to Disclosure of Capacity.

(Proposed Rule Change: Disclosure of Capacity. Every broker, dealer or municipal securities dealer that submits an order to a sole underwriter or syndicate or to a member of a syndicate shall disclose at the time of submission of such order if the securities are being purchased for its dealer account or for a related account of such broker, dealer or municipal securities dealer.)

Concerning the second item, FSC believes that it has always been the rule that customer orders have priority over dealer orders or related accounts orders. Rule G-17 expresses fair dealing with customers. Known also as "front running" customer orders, as you know, this has long been a prohibited practice in the securities industry. FSC supports the MSRB's proposed changes to Rule G-11 to strengthen the language regarding front running. However, FSC questions whether the draft rule amendments successfully achieves the MSRB's addressing of flipping i.e., curtailing the practice of where "...orders are sometimes not filled in whole or in part during a primary offering, yet the bonds become available shortly thereafter in the secondary market, at higher prices".

Flipping is a controversial and complicated issue.

As described by the MSRB in its request for comment, flippers can be retail dealers or syndicate members and their related accounts. FSC would like to express the view that flippers can also be non-syndicate members or customers such as hedge funds, investment advisors, mutual funds, bank portfolios, TOB programs, and even some institutional investors. Anyone who is allocated bonds in a primary offering has the potential to sell the bonds in the secondary market.

The issue of flipping poses several questions. Do purchasers of bonds from a primary offering have the right to sell their bonds at any time? Do purchasers of bonds from a primary offering have a right to take an immediate profit when possible? Do flippers provide liquidity to the municipal marketplace? Is flipping a case of demand being greater than supply thereby creating price discovery?

FSC believes that flipping is more widespread than just retail dealers and syndicate members or their related accounts and many questions need to be answered. FSC respectfully suggests to the MSRB that it undertake a thorough study of flipping and, if warranted, make appropriate recommendations for the regulation of this practice.



Conclusion

We thank the MSRB for its efforts and appreciate this opportunity to express our views on these proposed rule and interpretive notice changes. Should you have any questions, please do not hesitate to contact us. I can be reached at 214-953-4191.

Sincerely,

Carl Giles
Managing Director
Capital Markets