



April 21, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria VA 22314

Comments in Regard to Notice 2011-18

Dear Mr. Smith:

TheMuniCenter, L.L.C. (“TMC”) is pleased to respond to the Municipal Securities Rulemaking Board (“MSRB”) Notice 2011-18 “Request for Comment on Draft Rule G-43 and Associated Amendments to Rules G-8, G-9, and G-18”. TMC appreciates the Board’s efforts, since the original drafted rule, to meet with industry participants for crafting legislation that is appropriate given the significant changes in the market over the last decade. TMC is both a registered broker dealer and registered Alternative Trading System (“ATS”). While TMC does not present itself as a broker’s broker, under the proposed definition TMC would be subject to the rule as it operates as neutral intermediary to bring counter-parties together electronically. Unfortunately, G-43’s definition of a broker’s broker unfairly categorizes electronic marketplaces as such and we support the Board’s efforts to recognize the differences. Without the proposed ATS exemption or modification to the draft language, both the movement towards electronic trading and the regulatory support of exchange trading will be impaired. Furthermore, the adoption by many firms to place customer items out for competitive bidding as opposed to only internal bidding, will become both significantly less efficient and less transparent. Ultimately, this will result in higher transaction costs for all market participants.

Should a broker’s broker be permitted to have non-broker dealer clients?

TMC supports allowing broker’s brokers to have customers and agrees with the MSRB’s ruling that a broker must disclose such a relationship as defined in G-43(d)(i)(J). As the markets have changed, certain broker’s brokers have customer accounts and virtually all municipal ATS’s

support customers as clients. While the MSRB is concerned about favorable treatment of customer accounts over dealers, the favoritism is not a natural state for a broker. In fact, a broker receives no more additional benefit from serving an institutional customer over a dealer. Dealer customer favoritism originates from such things as designations on orders and receipt of orders for new issues. Dealers compete against each other for these benefits, brokers cannot. A customer account can only offer a broker the same buying and selling opportunities that a comparable dealer can equally offer. To preclude industry participants from having such relationships would be anti-competitive and provide other venues with an unfair advantage. TMC believes that a fully transparent marketplace with a wide breadth of participants will create a more liquid marketplace for all parties. FINRA rules, such as the proposed 15c3-5, help regulate the behavior of customer's interaction with the debt ATS's and further support an efficient market.

TMC does not support the current language for Draft Rule G-43(d)(i)(H) requiring a broker to disseminate all pricing information equally, publically, or otherwise and to only post to the selling firm the bids and to the high bidder the cover. As stated above, a customer account has no natural advantage versus a dealer account and does not logically dictate special treatment. Broker's as a neutral intermediaries require both parties of a trade to be treated equally regardless of client type. Furthermore, the language to post publically and equally is not clear as to exactly who and what can be posted. Is the "public" posting only to the bidders that participated in an auction? Is to post to all participants "equally", suggesting that a bidder who missed the trade price by 10 points receive the same post as the participant who missed the trade by 10 cents? As an ATS, our system automatically and systematically posts bidders based on the performance of their bids. This process rewards competitive bidders over the bidders who are less engaged. Rewarding good bidders encourages better prices. With the MSRB price dissemination service, all participants are posted as to the trade level and the idea of disclosing that bids may or may not reflect market levels is superfluous to industry professionals. The details of the auction should selectively reward those firms who have taken the time to research and make an effort to bid market levels. TMC believes an ATS should be allowed to post different information to auction participants as long a systematic process is equally applied.

Dual Agency Electronic Trading Representation Draft Rule G-43(a)(iii)

With respect to Draft Rule G-43(a)(iii), TMC supports the exemption for registered ATS's to represent as agent both the buyer and seller when an unsolicited bids wanted is placed by the client firm. Under a voice process, a relationship is first created when the seller contacts a broker, who in turn, often plays a role in defining the characteristics of the auction such as the bid-by time, the firm time length, and the order in which client firms first learn of the bids wanted, etc. Under the electronic process, theses decisions are exclusively based on the will of the participant. Furthermore, under an electronic process, all participants are treated equally; that is, every user receives the same information at the same time. An electronic medium significantly reduces many of the abuses the MSRB is concerned of in the traditional broker's broker space. TMC believes that it has a responsibility to equally represent both the buyers and

sellers in order to insure a fair auction process. This belief extends electronically to providing both the buyer and seller with such information as price history, EMMA disclosures, analysis tools, and “reasonableness” checks to insure a healthy auction process. The MSRB correctly identifies that the vast majority of bids wanted submitted electronically are odd-lots. While the size of the trade does not necessarily dictate whether a voice or electronic medium is appropriate, it does emphasize the market’s need to have electronic access for the large number of bids wanted that exist today. Many more firms are placing retail lists out for the bid, not for market discovery, but for providing clients with best execution. The self directed nature of an exchange environment and the incidence of human error that invariably occurs as a result of self directed actions should necessitate that both seller and buyer are represented by an ATS. Therefore, TMC supports the ATS exemption whereby the electronic process treats all markets participants equally.

Rule G -18 – ATS’s/Brokers cannot use same level of care as a dealer to determine fair price

TMC believes that a broker’s broker does not have the same resources, information, client facts and circumstances to determine fair value for the participating dealer. It is understood that the selling dealer still has to make independent decisions; however a false sense of security can be created by suggesting that a non-risk taking broker has the ability to provide guidance to determine fair value. The notion that a broker can determine fair value for a trader is no more accurate than suggesting that the pricing services can determine fair value for all participants. The very challenge of determining value and the expertise required is exemplified in most trading shops where the separation of trading and sales responsibilities is divided as to allow traders to focus solely on market valuations.

The MSRB incorrectly assumes that a well run auction will have many bids per item when in fact many large odd lot lists often only have a few bids per item due to the volume or time constraint imposed on dealers to bid lists. Large lists with small size items, TMC averages 150 items per list, often dictate fewer bids as the time required to research and process tickets cannot cover bid/ask spreads. A better indicator of fair value is often price dispersion as opposed to the depth of bidding. Adding further to the complexity of evaluating bids, most bids are placed minutes before the bid by time, allowing little time for broker evaluation. For an ATS to verify each bid on such large lists in a timely manner would require significant resources. TMC believes that in periods of low liquidity and high volume, such as in 2008 when bids wanted were often the best source of liquidity available to the Street, the market’s ability to handle volume spikes will be significantly reduced.

With respect to the ATS’s, without further clarification or an exemption, the rule would be difficult to comply with and require a significant re-design in systems for all market participants. For example, TMC receives approximately 2,000 bids wanted daily. The vast majority are submitted via a direct line, whereby the posting client submits the bids wanted using an electronic protocol straight from their internal trade systems. TMC is unaware of the trader on the other side and only has knowledge of which firm originated the bids wanted. In fact, TMC learns of the bids wanted at the same time all users on the site are alerted to the bids wanted.

Furthermore, complicating the fact of who originated the bids wanted, there are many instances where a salesperson, not a trader, has routed the bids wanted directly to the ATS and a trader will not be involved until a client makes a decision to sell. The “involved” trader is completely unknown to the ATS as the participating firm has received all of the bids wanted information electronically and will independently decide who to involve. The same premise holds for firms bidding via API’s where TMC only knows of the firm bidding, not the trader. Instances of attaining written seller permission or bidder notification will be virtually impossible.

As a result of the self-directed nature of transacting over an ATS; if an ATS makes available aggregated, bona fide and executable content for comparison purposes, as well as access to reported trade activity, then it has satisfied its obligation to provide the seller all of which it is capable of in terms of establishing an opinion of what constitutes a fair and reasonable price. Therefore, the ultimate responsibility for judging fair and reasonable price as it pertains to bids wanted over an ATS, which by nature supports self directed transaction activity, lies with the market professional who is listing the item. The ability to discuss bids, discuss values, or exchange written permissions, simply does not exist. TMC believes that a “process-based” rule would be appropriate for electronic exchanges. TMC supports the idea that an exchange that treats all participants fairly should satisfy G-18 by using a standard of care as if the auction process was conducted for its own account.

Draft Rule G -43(c)(vi) – Contact of participants submitting erroneous bids

TMC understands the MSRB’s attempt to eliminate the inherent conflicts of interest in having brokers contact dealers about their bids in relation to other market participants. While electronic trading does not have these conflicts, TMC supports consideration for electronic exchanges that systematically provide all bidders and sellers with the same information with respect to the reasonableness of their bids. Furthermore, early warning flags based on historic trade information and not based on any of the specific bids placed on a chosen item cannot be interpreted as a conflict of interest. TMC believes that all ATS’s should be required to provide a disclosure statement that clearly defines both the auction process and rules of engagement for both the buyer and seller. While voice brokers can intercept an erroneous bid prior to it being formally accepted, transposition errors and other such numeric mistakes are human nature in the bidding process. It would be unfair to penalize a market participant for hitting the “Enter” key when a systematic approach can effectively eliminate clearly aberrant levels.

As mentioned earlier, for clients using internal trade management systems, it can very difficult or impossible to identify which trader is submitting a bid. Sophisticated firms often use a rules based “black box” is submitting a bid and the trader will not be assigned until an execution takes place. TMC believes that ATS’s should be enabled to contact a firm to relay only the electronic warning if the ATS’s has not received confirmation that a bid has been checked.

TMC supports the MSRB's requirement for ATS's to satisfy G-43(a)(iv) and (c)(vi) by providing systematic notification to bidders, but with undefined rules as to what information can be used as long as the information does not disclose any information on contemporaneous bids. Regulating exactly what should be disclosed and how will retard creativity and limit development of new tools to assist with the bidding process due to concern of violating rules.

Finally, G-43(c)(vi) states that a broker must not contact a bidder until the auction process has concluded. TMC requests clarification on posting bidders, after the bid by time, as to whether their bid is being used or not is appropriate. Having the opportunity to post participants on their bid status during the firm time will free-up capital for the bidders to deploy on other lists. TMC believes the option to post is important to market liquidity and will benefit firms trying to deploy more capital available.

TMC appreciates the opportunity to respond and is available for any further discussion.

Sincerely,

Thomas S. Vales
Chief Executive Officer