

November 10, 2010

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

Comments to Notice 2010-35

Dear Ms. Henry:

TheMuniCenter, L.L.C. ("TMC") is pleased to respond to the Municipal Securities Rulemaking Board ("MSRB") Notice 2010-35, Request For Comment on MSRB Guidance on Broker's Brokers. TMC is an electronic exchange for trading fixed income securities. Started in May of 2000, TMC has grown to become a leader in facilitating electronic trading of fixed securities over its open and anonymous platform. Over 250 firms trade daily on TMC, averaging approximately 2,200 municipal transactions. In 2009, TMC had almost 250,000 Bids Wanted totaling nearly 33 Billion in par amount.

TMC supports the efforts by the MSRB to define more clearly the rules for the Bids Wanted process; however, we have concerns with the MSRB's understanding of how a broker's broker operates, especially with respect to the limited nature of the information that is made available to a broker from a client firm when executing a transaction

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

G-18 states "The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account". This standard is not appropriate to apply to a broker, as the broker does not always know the client or the parameters of the transaction. A dealer has the relationship with the client and thus understands the fact and circumstances of the possible sale. With this information, the dealer makes a decision as to the timing and duration of the Bids Wanted process. For example, an unusually short auction process may be appropriate if the dealer has arranged a swap on the other side. Lower priced bids would be expected by the dealer, which could be acceptable given the parameters. The dealer dictates these parameters to the broker, along with the specifics of the auction itself, such as bidding in competition or open bid period. A broker's responsibility is to carry out the auction process to

the best of its abilities, given the conditions specified by the dealer. Thus, the dealer needs to make the final determination of fair pricing, and the obligation of the broker should be to run the auction process with the same care as if for its own account. By our estimate, the broker's market supports over 3,000 bids wanted daily. It is overly burdensome to require participants to sign written waivers for exceptions. If the regulation were modified to fit the natural process, than written waivers would only be required for aberrations. The responsibility of a broker should be to maintain a fair process for both parties and to request written disclosure for exceptions.

Rule G -17 – Broker to conduct auction in a fair manner for both buyer and seller

The notion in the Proposed Guidance that the broker "must not take any action that works against the client's [i.e, the seller's] interest...subject to the ability of both the seller and the bidder to agree in advance of a transaction that the broker's broker may represent the interest of both the seller and the bidder" is inconsistent with market practice. The broker should always represent both sides of a brokered transaction, and the standard of fair dealing should apply to the auction process rather than to a single party to the transaction. The language should state that the presumption is for the broker to represent both sides, unless stated in writing that the broker is representing the buyer or the seller. As a neutral intermediary, the broker should seek to conduct an auction process that is fair to all participants while helping to find a fair market price. As an auction agent, the broker has the responsibility to both parties that the auction is carried out according to the specified terms. Favoring one party over the other can ultimately put a retail client at risk.

Rule G -13 – If a broker is distributing a quotation on behalf of another dealer, such broker shall have no reason to believe that the price stated is not based on best judgment of the fair market value.


The Proposed Guidance states that "directions to a specific bidder that it should "review" its bid", etc. are prohibited. However, if a broker is conducting an auction in a fair manner (in accordance to Rule G-17), we would suggest that the broker's broker has an equal responsibility to both the buyer and seller as directed by the spirit of the language in that rule. As a neutral intermediary, the broker should seek to conduct an auction process that is fair to all participants and to find a fair market price. For reasons noted above, it is more difficult for a neutral intermediary to assess price levels than for a dealer, but access to bid information from multiple qualified participants helps with price discovery. If it appears (for example) that a firm has mistakenly transposed a number and is materially away from the market, the broker under G-13 should be able to notify the bidder. It is not in the best interest of the market to allow dealers to execute at off market levels.

The Proposed Guidance also points out that accepting "bids after a bid deadline" is "deceptive, dishonest, and unfair". Market practice, however, is such that many bids wanted are submitted without deadlines, but instead with "around" times; in other words, bidders are encouraged to

bid without constraints as to deadlines. In such cases, there are no "late bids". However, in an auction with a firm deadline, the notion of fair practice would dictate that a broker notify a dealer of an off-market bid, and the dealer would not be allowed to rebid if the discovery is made after the bid time. In such cases, allowing such bids may in fact be appropriate, as the market could benefit from another bona fide bid. It could also be unreasonable to re-run the auction process if the mistake mentioned above is discovered in a timely manner and if the market has not moved materially. Due to the high volumes of Bids Wanted, traders do not have the time to re-bid, and may even not bid if an item is out for bid repeatedly. The idea of re-bidding could negatively affect the price of the item out for the bid. Regulation should support price discovery, not discourage it, and having brokers check prices promotes market efficiency by enabling traders to bid without fear of being "picked-off". As long as the auction terms are clearly defined, dealers and clients support this model and feel confident bidding. The standards of fairness, reasonableness, and materiality have all been used in the current guidelines and are dictated by the facts and circumstances of the market at the time of trade. Any "checking" of bids should be documented for their reasons of notification.

Thank you for giving us the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas S. Vales', written in a cursive style.

Thomas S. Vales
Chief Executive Officer