



November 3, 2011

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

Comments in Regard to Notice 2011-50

Dear Ms. Henry:

TMC Bonds L.L.C. ("TMC"), formerly known as TheMuniCenter, is encouraged by the progress made with the revised Draft Rule G-43 and pleased to respond to the Municipal Securities Rulemaking Board's ("MSRB") request for comment. Most important, we are encouraged by the path the Board has taken in understanding the role of a broker's broker and removing the obligation for determining fair pricing. While the new revisions provide a means for a safe harbor, there is still a great deal of friction that will result from the current proposal which will ultimately lead to loss of efficiency and greater transaction costs for market participants.

While the MSRB is focused on both addressing a number of the non-competitive behaviors of the traditional voice bids wanted process and seeking to insure better bid levels, the regulation, and the associated added documentation, will decrease the efficiency of the market and lead to less liquidity for customer sell orders.

G-43 (d)(iii) Definitions – "Broker's Broker"

It is peculiar that a broker dealer utilizing the services of a broker's broker, in the process of achieving best execution for a client, will be subject to greater regulatory requirements than if the firm were to simply bid the customer bonds directly. A dealer responding to a customer bid wanted will have the same obligations of G-18 and G-19 whether bidding the item internally or placing it out for bid with a broker's broker, but in the latter instance, the dealer will be subjecting itself to the possibility of having to maintain additional internal records as to the bid process. In a time where there is generally less capital committed to the market, the new rule discourages dealers from competitive ("in-comp") bidding.

The definition of a Broker's Broker states, among other things, that the firm "holds itself out as a broker's broker" to be included in the definition. A number of broker dealer firms place bids wanted out with multiple broker's brokers and/or place bids wanted out directly with a number of other broker dealers. As a dealer's business is not usually "principally" effecting transactions for other dealers but for its client, would a broker dealer be exempt from the definition or is acting like a broker's broker the equivalent of "holds itself out as a broker's broker?"

Also, many dealers post the same bid wanted with multiple broker's brokers, ostensibly for compliance reasons. Does the use of multiple broker's brokers create an unfair practice with respect to G-17, as, in virtually every case, the bond can only trade to one party? Furthermore, if a dealer uses multiple brokers, should that be disclosed to the broker so that the broker can disclose that fact to potential bidders? The Draft Notice cites G-17 and the notion that the bids wanted process should not be used for price discovery only. If the same bond is out for the bid with multiple broker's brokers, and the bond can only trade once, would that be viewed negatively by the regulators, barring disclosure to the marketplace? Finally, if a broker's broker receives a bid wanted that has been posted to multiple firms, does the broker need to use the same level of care as if the item were for its own account (an odd notion in and of itself, given that broker's brokers do not trade for their own account) when the broker's clients may be at a disadvantage when bidding? We hope the new regulation will clarify these points.

G-43(b)(vii) Prohibition against changing prices

The proposed G-43 regulations, written for the broker's broker market, by its definition includes all of the electronic trading platforms. A major product line for most of the ATS's is the creation of Private Label websites that are branded for specific firms which include both filters for the type of inventory allowed and customized matrices for marking up of inventory. Virtually all firms request a matrix grid, whereby the ATS marks-up inventory by a suggested predetermined amount in order for a financial advisor to readily view the end client's net yield and the amount of commission associated with the trade. The matrix grids can be applied to both the bid side as well as the sell side of the market. Additionally, firms with direct lines often ask for customization for their internal needs. For example, some firms may not be able to accommodate the fee schedule and ask for the fee to be imbedded in the price of the offering. The proposed language would be meaningless as all ATS's would be required to inform every registered firm that every price they post will be changed, and in multiple ways, as each recipient firm defines its own matrix. Current guidelines already prohibit unfair dealing. Isn't a broker arbitrarily changing prices already prohibited from such activity? The MSRB should remove this language or modify it to accommodate private label websites that allow customers and registered reps to view inventory.

G-43(b)(ix) Conduct of Bids Wanted and Offerings – Below Predetermined Parameters

TMC acknowledges the efforts of the MSRB to recognize the amount of odd-lot municipal volume that trades electronically and the unique set of circumstances surrounding electronic executions. The idea of a "safe harbor" is a step in the right direction for facilitating efficient trading and empowering market participants to make individual decisions. Regulation designed

to acknowledge the benefits of electronic trading and the growth of the Alternative Trading System community will promote greater access to market participants for product. As with the equity market, municipal market participants should have both the option to trade electronically or use the services of market professionals.

While TMC recognizes the MSRB's desire to limit the number of off market trades that result from the bids wanted process, the attempt to add written communication and/or oral confirmation will greatly reduce the efficiency and accuracy of the electronic market. TMC conducts 2,000 bids wanted daily, with the bulk of the items out for bid between 10am and 4pm. In volatile markets, peak volume can rise to 4,000 items out for bid daily. Many of these items are posted to TMC from API clients with direct line feeds to the TMC marketplace. These API users choose not to use the tools available to TMC's web clients; instead, they have developed their own tools for evaluation and analytics. It is not feasible to inform direct line feed clients that their bids fall outside predetermined parameters, and any change or addition to a broker's predetermined parameters would require every client of that broker to re-write its interface, change its database, and test the new functionality. The fallacy of the proposal lies in the belief that a single model will be sufficient for determining reasonableness. For example, TKG analytics, MSRB price history, material events, IDC evaluations, etc. are just some of the resources available to TMC's users to assist in the decision making process, and each of these tools offers traders a different level of perspective based on current market conditions.

Furthermore, many of the direct line clients generate bids algorithmically, with bids coming into the TMC marketplace seconds before the bid by time; it is fair to say that the clients' process of evaluating these items for the bid does not include use of TMC's tools. While TMC provides a suite of tools for security and market analysis, the professional client has the discretion to determine if and how to use each tool.

With respect to fair pricing, in response to the last MSRB Notice 2011-18, many market participants agreed that a broker's broker was not, and could not be, responsible for determining fair pricing. The modified language in the current release still proposes that the broker's broker provide a fair price, but the Board has relaxed the requirement to include a price band. TMC's response to this change is to note that its tools are designed to help with a user's valuation process, not to replace the decision maker. While TMC can certainly flag items/bids that seem rich or cheap, based on a model, determining a security's value is infinitely more complex. If this were such a simple task, one could define their safe harbor as simply the use of a major pricing service, and if the bid deviates by more than x% from the evaluation price, then notify the appropriate party. The reality is that designing and testing a system to establish fair value on as diffuse a market as the municipal marketplace would be a daunting task.

Equally important, the concept of written permission and documentation of conversations is time consuming in a normal market, but it completely breaks down in a volatile market. The most sophisticated models have difficulty pricing bonds during times of volatility. Examining the offerings of the online brokerage firms in volatile periods, one would see a significant drop

in inventory, as pre-configured filters kick out inventory at new price levels. Municipals are even more challenging to price, when one recognizes that there is no efficient hedge in the marketplace to track or model. For example, models based on Treasury prices self-destruct when large basis moves result in Treasury bonds moving significantly in price, while municipals move little. Recognizing that volatile periods will generate the most exceptions with any model, the burdens placed on participants to record and acknowledge price levels will be unbearable. If the model were to kick out a mere 5% of the bids on a high volume day, at just TMC, approximately 125 trades would fail the predetermined parameters. At 5 minutes per call, that would require over 10 hours of telephone conversations.

TMC believes that a standard of reasonable care for broker's brokers should include "reasonable" tools to help with the decision process, but the construction of a scheme to establish value in a fragmented and diffuse market seems to be more appropriate for a position taker than for an intermediary.

Rule G – 43(b)(vi) – Requirement of Sellers consent before contacting bidder on bids within a model's parameters (poor cover)

The requirement of a broker's broker to contact a seller for permission to contact a bidder, when the bid itself is within the parameters of the safe harbor is neither practical nor realistic. A selling dealer, who is acting in the best interest of its selling client, is not likely to give such approval. Furthermore, if the selling dealer allowed the broker to contact the bidder in some circumstances, but not on other similar instances, is the selling dealer dealing fairly with all of its clients? Also, the requirement to document the communication, the original bid, and the changed bid is superfluous and an added regulatory burden.

Also, in the above case, what recourse would the broker's broker have if given permission to contact the bidder? Under G-43(b)(v), the broker's broker cannot accept late bids. Can the broker accept a new bid from the bidder, or is the bidder given the option to remove the bid? Again, if the bidder can withdraw or lower the bid, what seller would ever grant such permission, unless the seller agrees that the bid is truly off-market and does not want to be party to such a trade?

There is a supposition that traders know what they are bidding on, but mistakes can happen, digits can be transposed, bids can be "fat-fingered", and the like. The MSRB's proposed rules arguably allow sellers to force (or attempt to force) trades in the case of erroneous bids. The need to get the seller's permission to alert a bidder to a potentially erroneous bid, in the case of a bid that falls within the parameters of the safe harbor, would put the bidder at a severe disadvantage in such circumstances. One commenter to the Board's first G-43 release observed that one of a broker's broker's main functions is to avoid trade prints that are not reflective of market value. TMC strongly agrees with the statement.

Contrary to the notion expressed in the Board's discussion of the revised rule, unfavorable cover bids are poor indicators of bid quality. In a fragmented market, there is no need to

assume that there will be more than one “market” bid, especially given the implicit acknowledgement that sometimes there are no market bids for a given item.

Rule G – 43(c)(i)(G) – Disclosure of Customer business

TMC fully supports the notion that broker’s brokers should prominently disclose the types of firms that constitute its client base. However, to disclose to a seller information about the buyer of an item at the time of trade is unfair and against the anonymous nature of the broker’s market. Customers should have the same protections as dealers. The disclosure to the seller on the client type is a loss of protection as to the identity of the client. Anonymity is an extremely important component of the utility of an intermediary (either a voice broker or an ATS) in the municipal market. Informing a seller that a buyer is a particular type of user compromises the concept that a buyer can function anonymously. Any regulatory requirement that would serve to compromise anonymity would be a negative development for a market that has always given participants ways to protect their identities.

Rule G – 43(c)(i)(H) Predetermined Parameters

As participants have stated in earlier comments, it is not the job of a broker’s broker to establish fair market value. The mandated use of predetermined parameters is a Trojan Horse, as the proposed rule has now migrated to a model based determinant. Furthermore, requiring testing of tools is also a concern. Exactly how would a model be tested? With over 500,000 bids wanted in the market annually, what defines a successful model? If a bond trades outside its parameters and days later the market moves toward that price, was the model flawed or did the trader make a good decision?

TMC uses a number of tools to assist traders with making trade decisions. Many of these tools have been adapted to TMC’s user base after years of client feedback. It would be anti-competitive for TMC to disclose its tools. Dealers decide which broker’s broker or platform provides the best service for the type of business they are wishing to conduct. Web site design, integrated tools, depth of markets, and brokerage support are just a few of the variables that affect a trader’s decision on whether to use a broker’s broker on an ATS, or which one to use. If a trader does not like the service, he/she uses another firm or platform. Public disclosure of such tools is not necessary, as they are apparent to the user. TMC strongly believes that providing users with useful market and security specific tools should suffice to satisfy the Board’s desire to improve bid quality. If a firm uses the same systematic approach for each posted bid wanted and has a set of tools that helps traders establish value, then there should be no need for a safe harbor.

Rule G-8 (a) (xxv)(F) Books and Records

Rule G-8(a)(xxv)(F) lays out requirements for documentation whenever an offering price is changed. ATS’s acting as centralized marketplaces receive thousands of bids and offerings

daily. TMC has approximately 30,000 municipal offerings daily, with dealers changing prices on their offerings constantly. There are myriad reasons for offerings to change: e.g., fluctuating market conditions, changes to a trader's net overall exposure, or a management decision to increase or decrease risk. In the taxable municipal market, dealers regularly post offerings that change whenever a taxable benchmark (typically a US Treasury) price changes, and offering prices can change several times per minute. Requiring brokers' brokers to document price changes would be of no value to the market, as traders know that offering prices are always subject to change. Additionally, documenting tens of thousands of price changes on a daily basis would be cost prohibitive.

In conclusion, TMC appreciates the Board's attempt to clarify some of the practices in the broker's brokers market. TMC believes, however, that a number of the Board's suggestions put an inordinate amount of responsibility with respect to establishing fair value on bids wanted onto the broker's broker and that associated record-keeping requirements are unduly onerous. Additionally, the proposed rule appears to favor sellers of bid wanted items vis-à-vis buyers, in terms of which party receives protection from potentially off-market levels. Finally, TMC feels that there are several circumstances in which rules that apply both to voice brokers and the ATS's are inappropriate. Specifically, firms that have direct line access to the ATS's and/or trade algorithmically are in no position to benefit from the provisions of G-43; TMC feels that a separate discussion with respect to ATS's and their users is warranted.

Thank you for giving us the opportunity to respond.

Sincerely,



Thomas S. Vales
Chief Executive Officer