



REGIONAL
BOND DEALERS
ASSOCIATION

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June 4, 2010

Mr. Ernesto A. Lanza
General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Comments in Regard to Notice 2010-10

Dear Mr. Lanza:

The Regional Bond Dealers Association (“RBDA”) is pleased to submit comments on MSRB Notice 2010-10, Request for Comments on Draft Interpretive Guidance on Prevailing Market Prices and Mark-Ups for Transactions in Municipal Securities (the “Notice”). The RBDA is the organization representing middle market dealers in fixed-income securities in the United States.

The RBDA generally supports the effort by the MSRB to harmonize the manner in which the prevailing market prices for municipal securities are determined with the manner established by the Financial Industry Regulatory Authority (“FINRA”) for purposes of other types of debt securities. RBDA is concerned that the attempt to provide guidance and establish principles for determining the prevailing market price under the wide variety of circumstances that exist in the current municipal market has created a process that is complex and difficult to apply and may impact the liquidity of municipal securities.

The draft guidance presumes that the contemporaneous cost of a transaction entered into by a dealer is the best evidence of the prevailing market price. The passage of time appears to be the only factor in the Notice for determining whether or not a prior trade is considered contemporaneous with a later trade but other factors may influence such a determination, such as legislative and regulatory actions and proposals, including those affecting the tax status of municipal securities, subsequent events or disclosures affecting individual municipal securities or types of securities or individual municipal issuers or types of municipal issuers and general market volatility including the effects of national and international events. RBDA requests MSRB to provide guidance (i) determining how much time needs to pass to automatically make trades not contemporaneous and similarly how much time needs to pass to create a rebuttable

presumption that trades are not contemporaneous, (ii) adding the types of factors other than or in addition to the passage of time which may be considered in determining that trades are not contemporaneous, and (iii) establishing a general rebuttable presumption in favor of a dealer's good faith determination that trades are not contemporaneous.

RBDA is also concerned that because many municipal securities are thinly traded, the Notice does not sufficiently recognize that for such securities there effectively is not a contemporaneous cost that can be determined. Although the Notice does provide in some circumstances for the use of other methods and comparison with "similar" securities, the Notice does not clearly state when those other methods and comparisons may be employed. RBDA requests that MSRB to provide additional guidance as to when other methods and comparisons may be employed.

Furthermore, the Notice provides that "A dealer seeking to present evidence to overcome the presumption of contemporaneous cost as indicative of the prevailing market price must retain contemporaneously produced records of the facts and circumstances and such other evidence that support such position." However, the Notice does not provide guidance regarding what records would need to be produced to demonstrate the facts and circumstances that led the dealer to conclude that a transaction was not indicative of the prevailing market price nor regarding what records would need to be produced to demonstrate how the prevailing market price was ultimately determined. RBDA urges you to include in the final guidance rules regarding what records would be required to overcome the contemporaneous cost presumption and to demonstrate that the price established was "fair and reasonable. RBDA requests that the MSRB in developing such rules consider the administrative burden that producing contemporaneous records will have as well as the potential impact on market liquidity and minimize the record keeping requirements. Also, the Notice does not provide any guidance as to how long such records should be retained. RBDA would suggest that such records, which are in many ways similar to account records and securities records, be retained for a period of not less than six years.

RBDA believes that a dealer should not need to meet the requirements of Rule G-30(a) with respect to customers when entering into municipal securities transactions with a sophisticated municipal market professional ("SMMP"). Therefore, RBDA supports the carve-out in the Notice from the definition of "Customer" for purposes of MSRB Rule G-30(a) of a SMMP "that is purchasing or selling a non-investment grade municipal security when the dealer has determined, after considering the factors set forth in the Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals, April 30, 2002 (the "Interpretive Notice"), that the SMMP has the capacity to evaluate independently the investment risk and in fact is exercising independent judgment in deciding to enter into the transaction." However, the RBDA believes that the carve-out needs to go farther. The carve-out should include all municipal securities rather than be limited to non-investment grade municipal securities. Once a dealer has considered the various factors set forth in the Interpretive Notice and made the determination that the SMMP has the capacity to evaluate independently the investment risk and in fact is exercising independent judgment in deciding to enter into the transaction, the rating of the municipal security involved with the transaction is immaterial. SMMP's are, pursuant to the Interpretive Notice, institutional customers which will have provided sufficient information to a dealer so that a dealer has reasonable grounds for

concluding that such institutional customers have timely access to the publicly available material facts concerning a municipal securities transaction, are capable of independently evaluating the investment risk and market value of the applicable municipal securities, and are making independent decisions about their investments in municipal securities. SMMPs by definition have established their sophistication and ability to purchase or sell municipal securities with dealers and no limitation on the type of municipal securities by ratings or any other category is warranted.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer